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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 37

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, PRESIDENT THEREOF, ET AL., PETITIONERS,

vs.

SHELTON PITNEY AND WALTER P. GARDNER, TRUSTEES OF CENTRAL RAILROAD CO. OF NEW JERSEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 16, 1945.

CERTIORARI GRANTED JUNE 18, 1945.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

No. 29778

In the Matter of CENTRAL RAILROAD COMPANY OF NEW JERSEY Debtor

In Proceedings for the Reorganization of a Railroad

PETITION OF ORDER OF RAILWAY CONDUCTORS OF AMERICA, ET AL., FOR AN ORDER PARTIALLY CANCELLING BULLETIN DATED MARCH 6, 1943, AND TO PREVENT THE DISPLACEMENT OF FIVE CONDUCTORS—Filed March 15, 1943

To the Honorable Guy L. Fake, Judge of the United States District Court for the District of New Jersey:

The petition of Order of Railway Conductors of America, a voluntary unincorporated association and a railway labor union national in scope, H. W. Fraser, President thereof, and Grover C. Apgar, General Chairman of the General Committee of Adjustment on the Central of New Jersey for the Order of Railway Conductors of America, respectfully shows and charges as follows:

1. That at all times hereinafter mentioned the Central Railroad Company of New Jersey was in possession of this Honorable Court in the proceedings pending herein, and Shelton Pitney and Walter P. Gardner were and they now are acting as trustees of the debtor corporation on appointment of your Honor.

[fol. 2] 2. That the Order of Railway Conductors of America, acting by and through its General Committee of Adjustment and Mr. Grover C. Apgar as its General Chairman, has been for many years last past and at the present time is the duly accredited bargaining agent and representative of the class and craft of road conductors of the debtor railway.

3. That for approximately thirty-five years last past road drill crews operating out of Elizabethport and Bayway South on the Perth Amboy Branch and the Sound Shore

Branch of the Central Railroad Company of New Jersey, have been operated by road conductors under the rules, rates of pay, and working conditions negotiated by and between the Order of Railway Conductors of America and the debtor, and in particular, the five so-called drill crews hereinafter mentioned have been and still are road conductors:

First Standard Oil
First Bayway
Bayway Dragout
Second Standard Oil
Extra Bayway

4. That on March 7, 1940, an agreement in writing was made between the Debtor, Central Railroad Company of New Jersey, and the Order of Railway Conductors of America, reading in part as follows:

> "No other change from the present method of assigning Conductors to service operated in the territory described in the preamble hereof, will be made except by agreement between the parties hereto."

[fol. 3] A true copy of said agreement is annexed hereto and marked Exhibit 1.

5. That on August 5, 1940, F. M. Falck, Assistant Vice-President of the debtor corporation, wrote a letter to H. P. Lawder, then General Chairman, Conductors' Committee, of the Central Railway Committee, predecessor in office to your petitioner Grover C. Apgar, a true copy of which is annexed hereto and marked Exhibit "A."

6. Petitioners further allege that said agreement and said letter above mentioned effected no change in conditions for the operation of the service mentioned in said letters, but merely continued working conditions that had been in existence for more than thirty-five years prior thereto.

7. Petitioners further show that Section 6 of the Railway Labor Act, as amended, being U. S. Code, Title 45, Chapter 8, provides as follows:

> "Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and

place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested [fol. 4] by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

8. Petitioners allege that on March 7, 1943, on all bulletin boards of the Central Division of the debtor corporation, there was posted a bulletin, a true copy of which is annexed and marked Exhibit "B," reference to which is hereby made for certainty, in which notice was given that applications would be received at the office of M. J. Haggerty, Terminal Trainmaster, Jersey City, N. J., from March 7 to March 11, inclusive, for vacancies, included in which are the drills expressly referred to hereinabove and particularly in the letter of F. M. Falck, dated August 5, 1940, hereinabove mentioned; such drills being designated with the letter "X" under the designation

E-434

(Elizabethport Yard)

The assignments of said positions are to be filled, in accordance with the terms of said bulletin, on March 16, 1943.

9. Petitioners further show and charge that prior to the posting of said bulletin no notice was given by the Central Railroad Company of New Jersey, the debtor, or any of its [fol. 5] trustees, officers or agents, and in particular, that no thirty-day notice as required by Section 6 of the Railway Labor Act has been given of an intended change in the agreement dated March 4, 1940, aforesaid.

10. Petitioners allege that it is the intention of the debtor and its trustees and their employees to fill the said five positions mentioned in the preamble to the agreement of March 7, 1940, and mentioned in the letter aforesaid of August 5, 1940, with yard conductors, and in so doing, to displace the road conductors who are now and for some time past have been filling such positions, thereby changing their working conditions to the extent of abrogating the agreement made in their behalf by your petitioners, as hereinaboye stated. That said five drill jobs, sometimes referred to as Bayway and Standard Oil Drills, have been manned by road conductors for more than thirty-five years last past. That said drill jobs operate within the seniority district known as the Central Seniority District of the Order of Railway Conductors, and that said jobs so manned by road conductors have been compensated and worked under the scale or collective bargaining agreement negotiated with the debtor by the Order of Railway Conductors for the class and craft of road conductors. That the compensation of said road conductors has been road conductors' rate of pay; that said road conductors operating said five drill jobs and their predecessors in office have acquired and now have valuable seniority rights affording by the agreements in effect the preferential right of employment in accordance with the number of years of seniority acquired. That said five drill jobs have been filled from time to time by road conductors selected and taken from the Road Conductors' [fol. 6] Seniority Roster, and by long practice, usage and custom as well as by the collective bargaining contracts negotiated by the Union with the debtor, said employees involved have a seniority right to the first opportunity to bid upon and work said jobs. That the proposed action of the debtor in displacing the road conductors from said jobs would undoubtedly destroy their seniority rights.

11. Petitioners further allege that they have no adequate speedy remedy at law, or before any administrative board or tribunal, and that unless the relief hereinafter prayed for be granted *pendente lite* and upon the final hearing of this cause, said employees now operating and manning said five drill jobs will be displaced and removed from their present jobs and their seniority rights will be damaged, destroyed and impaired.

Wherefore, your petitioners respectfully pray relief as follows:

(1) That the Court may by order summarily direct the Court's trustees not to fill the said five drills with yard conductors and not to violate the terms and conditions of the agreement made between your petitioners and the Central Railroad Company of New Jersey, the debtor, under date of March 7, 1940, on which date the said debtor was under the control, supervision and in the possession of the Court and its officers.

(2) That the Court may order and direct its trustees and their subordinates operating the Central Railroad Company of New Jersey, and particularly M. J. Haggerty, not to place in effect the bulletin annexed hereto, dated March [fol. 7] 6, 1943, and marked Exhibit "B," in so far as the five drill jobs mentioned in the petition herein are concerned.

(3) That the Court may by final order permanently enjoin and restrain its trustees, the debtor, and all of its officials and employees, from violating the contract dated March 7, 1940, aforesaid, so long as the same shall not be altered or amended in accordance with the provisions of the Railroad Labor Act or other applicable provisions of the law, and for such other and further relief as the Court may be pleased to grant.

Carpenter, Gilmour & Dwyer, Attorneys of Petitioners.

Carl S. Knebler, of Counsel.

[fol. 8] EXHIBIT I TO PETITION

Memorandum of Agreement Between the Central Railroad Company of New Jersey and Its Conductors Represented by the Order of Railway Conductors

For many years, Road Conductors have performed all of the service on the Perth Amboy Branch, Bayway and points South, and all of the service on the Sound Shore Railroad. In May, 1935, five crews tying up at Elizabethport were changed to tie up at Port Reading and, subse-

quent to that date, men employed as Yard men were permitted to operate runs known as Transfer Runs and handle the business on the Perth Amboy Branch. This question has been in controversy ever since that time and finally was submitted to the National Railroad Adjustment Board, First Division, by the Order of Railway Conductors.

At a conference this date, the following Agreement was entered into to settle this question:

Agreement:

After March 25th, 1940, Road Conductors will perform all conductors' service Morses Creek and South on the Perth Amboy Branch.

No other change from the present method of assigning Conductors to service operated in the territory described in the preamble hereof, will be made except by agreement between the parties hereto.

Claim for time had been made, and with the signing of this Agreement the Order of Railway Conductors agrees to withdraw any claims made for pay account of Road men [fol. 9] not being used to perform this service. Also, case will be withdrawn from the National Railroad Adjustment Board, and this Agreement will constitute a full settlement of this controversy.

For the Central Railroad Company of New Jersey: By F. M. Falck, Assistant Vice President. For the Order of Railway Conductors: By H. P. Lawder, General Chairman. Approved: By F. V. Williams, Vice President, O. R. C.

Dated Philadelphia, Pa., March 7, 1940.

[fol. 10] EXHIBIT "A" TO PETITION

(Letterhead of)

Reading Company

The Central Railroad Company of New Jersey

Shelton Pitney and Walter P. Gardner, Trustees

Office of Vice President

Operation and Maintenance
Reading Terminal
Philadelphia

August 5th, 1940.

Mr. H. P. Lawder, General Chairman, Conductors' Committee, CRR of NJ.

DEAR SIR:

I had before me at a meeting with the Trainmen's Committee on appealed cases, a claim for the right to place yard conductors on the so-called Bayway crews, which they list as follows:

First Standard Oil	in service	7.00 AM
First Bayway	" "	8.55 AM
Bayway Dragout	" "	11.40 AM
Second Standard Oil	" "	2.50 PM
Extra Bayway	" "	2.50 PM

You, of course, are fully familiar with what has transpired in connection with these crews—the transfer runs and the road drills—and our settlement with you and Vice-[fol. 11] President Williams, when we could not get the Trainmen to agree to a proposal which we handled jointly.

I have conceded to the Trainmen the right to say whether these Bayway crews, and even the new road drill crews, should be manned with road or yard brakemen or trainmen. I refused, in accordance with our understanding, to permit them to man the road drills or these five crews with yard conductors.

I am attaching hereto a copy of my advice to General Chairman Giles in connection with this instant claim. I do not think it is a case that should be progressed to the Adjustment Board, as it is purely jurisdictional. I doubt whether

the Board would accept it, to begin with, but if they would I should certainly expect that your representative on the Board would back your position and I understand that you and Vice President Williams would expect to intervene. It does seem to me that the time has come when, if possible, your Executives should try and compose these differences in this territory once and for all.

I would be glad if you would let me have your thought.

Yours very truly, (S.) F. M. Falck, Assistant Vice President.

[fol. 12] EXHIBIT "B." TO PETITION

The Central Railroad Company of New Jersey

Shelton Pitney and Walter P. Gardner, Trustees

Jersey City, N. J., March 6, 1943.

To All Concerned:

Applications will be received in this office from March 7th to 11th inclusive, for vacancies shown below. Applications must be made out on regular application form 313, and applicants will be given preference in their own seniority district. When making applications for position in yards other than their own seniority district, employes will fill out separate applications for each yard and be sure to show preference:

J—517

Jersey City Freight Yard

Conductor Extra List:

1st Trick

Conductor Run 113	Yard B	7:00 A.M.
Brakeman Run 133	2nd Yard A	8:00 A.M.
Brakeman Run 117	Pier 18	7:00 A.M.

2nd Trick

Conductor Run 217	Pier 18	3:00 P.M.
" " 215	Pier 18	4:00 P.M.
Brakeman " 206	Yard "E"	3:00 P.M.
" " 215	Pier 18	4:00 P.M.

[fol. 13] 3rd Trick

Conductor	Run	306	Yard "E"	11:00 P.M.
"	"	310	1st Lighterage	11:00 P.M.
"	"	312	Yard A	12:00 Mid.
"	"	330	Rel. Mid Yard	12:00 Mid.
Brakeman	"	306	Yard "E"	11:00 P.M.
"	"	328	3rd Lighterage	12:00 Mid.
"	"	314	E.E. Yard "A"	12:00 Mid.
"	"	305	Produce Yard	12:00 Mid.
"	"	329	4th Lighterage	12:00 Mid.

JPY—81

(Jersey City Passenger Yard)

1st Trick

Brakeman	1	A	7:00 A.M.

B—312

Bayonne Yard

1st Trick

Brakeman	Run	4	Roustabout 7:30 A.M.

3rd Trick.

Conductor	Run	5	Roustabout 3:30 P.M.

3rd Trick

Conductor	Run	6	Roustabout 11:30 P.M.
Brakeman	Run	9	Roustabout 12:00 Mid.

[fol. 14] E—434

(Elizabethport Yard)

1st Trick

Conductor	1st Bayway Drill	7:00 A.M. X
Conductor	1st Standard Oil Drill (Bayway)	7:00 A.M. X
Brakeman	Roustabout	8:00 A.M.

2nd Trick

Conductor	2nd	Bayway	2:05 P.M. X
Conductor	2nd	Standard Oil Drill (Bayway)	3:00 P.M. X
Brakeman	Run 11	E. E. Slush	3:00 P.M.

3rd Trick

Conductor	3rd	Standard Oil (Bayway)	11:00 P.M. X
Conductor	Run 17	Cripple Track	11:00 P.M.
Brakeman	Run 17	Cripple Track	11:00 P.M.
3 Brakemen	Run 6	Roustabout	12:00 Mid.

(X) Assignment to be made March 16th, 1943.

N—216

(Brills Yard)

1st Trick

Conductor	Run 6	Roustabout	8:00 A.M.
2 Brakemen	Run 6	Roustabout	8:00 A.M.

[fol. 15]

2nd Trick

Conductor	Run 16	Roustabout	4:00 P.M.
2 Brakemen	Run 16	Roustabout	4:00 P.M.
Brakeman	Run 24	Roustabout	4:00 P.M.

3rd Trick

Conductor	Run 12	Roustabout	12:00 Mid.
Conductor	Run 17	Roustabout	12:00 Mid.
Brakeman	Run 12	Roustabout	12:00 Mid.

M. J. Haggerty, Terminal Trainmaster.

State of New Jersey,
County of Hudson, ss.:

Grover C. Apgar, of full age, being duly sworn, upon his oath, according to law, deposes and says:

I reside at 153 Palisade Road, Elizabeth, New Jersey, and am General Chairman of the Order of Railway Con-

ductors of America, Central Railroad of New Jersey. I have read the foregoing petition and the exhibits attached thereto, and the matters therein contained are true as I verily believe.

The agreement of March 7, 1940, and the copy of letter of August 5, 1940, are true copies of the originals. The copy of bulletin annexed is a true copy of the bulletin that was posted for the first time on March 7, 1943. No notice by the railroad has ever been given as required by the Railway Labor Act, Section 6, to change, alter or [fol. 16] amend the contract of March 7, 1940. For over thirty-five years the jobs mentioned in the within petition have to my personal knowledge been filled with road conductors and said men have worked under the conductors' schedules, rules and regulations relating to pay and working conditions. Such rates of pay, rules and working conditions have been negotiated by and between the debtor and the Order of Railway Conductors of America as a duly accredited, bargaining agent and representative of the class and craft of road conductors of the debtor railway.

Unless the order as within prayed for is made *pendente lite* and the debtor and its employees are forthwith restrained from putting the bulletin into effect, I verily believe five road conductors will be displaced from their jobs on Tuesday, March 16th, 1943.

Grover C. Apgar.

Sworn and subscribed to before me this 13th day of March, 1943. Alice M. Boyle, Notary Public of New Jersey. (Seal.)

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed March 15, 1943

Upon reading and filing the verified petition of Order of Railway Conductors of America, et al, and the affidavit and exhibits in support of same, wherein it appears that irreparable damage may be suffered by certain members of the said Order and of the class and craft of road conductors,

It is on this 15th day of March, 1943,

Ordered that Shelton Pitney and Walter P. Gardner, Trustees of the Debtor and their subordinates who are the officers and employees of the Central Railroad of New Jersey, be and they hereby are directed not to place in effect until the further order of the Court so much of the bulletin, dated March 6, 1943, as follows:

[fol. 18]

E—434
(Elizabethport Yard)

	1st Trick	
Conductor 1st Bayway Drill	7:00	A. M. X
Conductor 1st Standard Oil Drill (Bayway)	7:00	A. M. X
	2nd Trick	
Conductor 2nd Bayway.	2:05	P. M. X
Conductor 2nd Standard Oil Drill (Bayway)	3:00	P. M. X
	3rd Trick	
Conductor 3rd Standard Oil (Bayway)	11:00	P. M. X

as indicates an intention to displace five road conductors with five yard conductors on drills out of Elizabethport, New Jersey, and known as Bayway and Standard Oil Drill jobs, which are mentioned and described in the petition herein.

Further Ordered, that the said trustees show cause before this Court on the 29th day of March, 1943, at 10:30 A. M. why an order should not be made either setting down the matters set forth in the petition for hearing at a date to be fixed or why an order should not be made continuing the restraint herein made *pendente lite* or so long as the agreement between the petitioner and the debtor remains in full force and effect unamended and unchanged in accordance with the Railway Labor Act.

Further Ordered, that a true copy of this order and [fol. 19] the petition and the accompanying exhibits be served on either of the trustees forthwith.

Guy L. Fake, U. S. D. J.

On motion of Carpenter, Gilmour & Dwyer, Attorneys of Petitioner.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF TRUSTEES TO ORDER TO SHOW CAUSE—Dated March 15, 1943

SHELTON PITNEY and WALTER P. GARDNER, Trustees, appointed by this Court (hereinafter referred to as "Respondents"), appear in answer to the Order of this Court, dated March 15, 1943, and respectfully show to this Honorable Court:

[fol. 20] That the matter which is the subject matter of the petition of the Order of Railway Conductors of America, on which said Order of March 15, 1943, is based, involves a jurisdictional dispute between said Order of Railway Conductors of America and the Brotherhood of Railway Trainmen. The Order of Railway Conductors of America (hereinafter referred to as the "O. R. C.") has been designated, as provided in the Railway Labor Act of 1934 (U. S. C. A. Title 45, Chapter 8) as the accredited representative of Road Conductors and Yard Conductors in inland yards, but not as the representatives of Yard Conductors or Trainmen in the New York Harbor Terminal Territory. The Brotherhood of Railway Trainmen (hereinafter referred to as the "B. of R. T.") has been designated in like manner as the accredited representative of Trainmen and Yardmen, including Road Brakemen and Train Flagmen, and Yard Conductors and Yard Brakemen in New York Harbor Territory.

That the Respondents and the officers of the Debtor under them have at all times endeavored to work out all questions of rules, rates of pay and working conditions with the duly accredited representatives of the various classes of employes in the service of the Debtor's estate.

That Respondents have endeavored to comply in every way with the general purpose of the Railway Labor Act to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions in accordance with the terms of said Railway Labor Act.

That at the time of the making of the agreement of March 7, 1940, referred to in said petition of the O. R. C.

and annexed as Exhibit 1 thereto, no claim had been filed by the B. of R. T. as to their right to have Yard Conductors man said drill crews referred to in said petition of the O. R. C.

[fol. 21] That, as hereinafter set forth, the B. of R. T. shortly after the agreement of March 7, 1940, did assert such a claim based upon their right to man crews operating within the switching limits which had been established by the Debtor in the year 1929, which switching limits were applicable to various locations and points on the system of the Debtor, including, among others, those in the New York Harbor Terminal Territory which included the switching limits at Elizabethport and Elizabeth, New Jersey. That said arrangements for said switching limits were approved by the various railway labor organizations, including the O. R. C. and the B. of R. T.

That under said arrangements the switching limits as established for Elizabethport and Elizabeth were Lorraine Tower West End, Race Track on the Newark and Elizabeth Branch North End, Morse's Creek on the Perth Amboy Branch and Sound Shore Railroad South End, West End of Newark Bay Bridge East End, within which switching limits are included the tracks at Bayway serving the Standard Oil Company and other industries operated by the five crews which were referred to in said petition of the O. R. C.

That annexed hereto as "Exhibit A" is a map showing in red the switching limits at Elizabeth and Elizabethport.

That for a long time it has been uniformly decided by the National Railway Adjustment Board, created by said Railway Labor Act, that seniority as to yard switching limits should be given to yard men and seniority as to road runs should be given to road men. That that was the condition at the time that the agreement of March 7, 1940, was entered into.

That the agreement of March 7, 1940, specifically provided that after March 25, 1940, Road Conductors would perform all Conductor's service from Morse's Creek south on the Perth Amboy Branch. That Morse's Creek was [fol. 22] the southern limit of the switching limits at Elizabethport as shown on said "Exhibit A" attached hereto. That the said tracks at Bayway and the Standard Oil

Company, as to which the controversy exists as to drill crews and which is referred to in said petition of the O. R. C., are located north of Morse's Creek and are within the switching limits of Elizabethport.

That the said agreement of March 7, 1940, containing provisions as to making no other changes from the existing method of assigning Conductors to service in the territory described in said exhibit, could not, jurisdictionally, be binding upon the B. of R. T. if they desired to assert their seniority as to crews operating solely within such switching limits, and that this was known to said O. R. C.

That shortly after said agreement of March 7, 1940, the B. of R. T. requested that their seniority rights to man all crews within the switching limits be recognized, and that accordingly the officers of the Debtor, by letter dated August 5, 1940, wrote to the General Chairman of the Conductors' Committee of the Debtor the letter which is annexed as Exhibit A to the petition of the O. R. C., setting forth the claims of the B. of R. T. to the right to place Yard Conductors on the so called Bayway Crews, and indicated to said Chairman that the time had come, if possible, where the executives of the railway unions should try to compose their differences in this territory.

That pursuant to this indication, several conferences were held with the executives of the O. R. C., at which they were advised in detail of the claims asserted by the B. of R. T. That in none of these conferences were the officers of the Debtor able to secure an agreement by the O. R. C., and the B. of R. T. as to the respective seniority rights of said railway labor unions.

That prior to said date of August 5, 1940, to wit, June 12, 1940, the B. of R. T. filed a claim with the Debtor's [fol. 23] estate for seniority rights and adjustment of compensation on the basis of their alleged seniority rights to have Yard Conductors on said Bayway Crews.

That subsequent to August 5, 1940, both by correspondence and in conference, the matter of the claim of the B. of R. T. of seniority for Yard Conductors on said Bayway Crews was repeatedly called to the attention of the officials of the O. R. C., and no result could be obtained.

That the officers of the Debtor were unable to bring about an agreement between the O. R. C. and the B. of R. T. to settle their claims as to respective seniority rights,

and it became necessary for the officers of the Debtor to dispose of this claim on the best basis they could and substantially under the interpretation, above referred to, as made by the Railway Adjustment Board of the switching limits and agreements in effect on the lines of the Debtor between the O. R. C., the B. of R. T. and the Debtor.

That during the month of November, 1942, the officers of the Debtor arrived at a tentative agreement with the B. of R. T. to recognize their seniority rights to place Yard Conductors on these Bayway Crews.

That prior to executing the agreement with the officers of the B. of R. T., however, the officers of the Debtor felt that it was desirable to again discuss this matter with the officials of the O. R. C., and on November 5, 1942, the officers of the Debtor wrote to G. C. Apgar, General Chairman, O. R. C., advising of their desire to discuss with the O. R. C. matters in connection with the so-called Bayway Crews, and following this letter a conference was held on November 10, 1942, at which conference the officers of the Debtor advised the officers of the O. R. C. of the conclusions which they had reached as to the necessity of entering into an agreement covering this situation with the officers of the B. of R. T. That the officers of the [fol. 24] O. R. C. declined to acquiesce in the claims of the B. of R. T. and the decision of the officers of the Debtor was that under the terms of the agreements with both organizations, and the switching limits established in 1929, Yard Conductors should be placed on the Bayway Crews.

That thereafter, on November 28, 1942, the officers of the Debtor were advised by telegram from the Secretary of the National Mediation Board that the O. R. C. had invoked the mediation services of the Board in a dispute with the Debtor on account of management's proposal to reclassify Bayway drill assignments, and invited their attention to Section 6 of the Railway Labor Act, and requested the Debtor to give any opinion it cared to give in this dispute. That pursuant to said telegram, officers of the Debtor advised the Mediation Board, under date of December 5, 1942, fully regarding the matters in dispute.

That prior to February 25, 1943, the officers of the Debtor failed to receive any further advice from the Mediation Board, and under date of February 25, 1943, they

wrote to the B. of R. T. advising that they were handing them therewith six copies of the memorandum agreement executed on the part of the Debtor covering the settlement of this claim which had previously been discussed with them, and requesting them to execute same and return copies to the officers of the Debtor. A copy of this memorandum agreement is annexed hereto as "Exhibit B." Said agreement was executed by said officers of the B. of R. T. on March 3, 1943, and returned to officers of the Debtor.

On March 5, 1943, the officers of the Debtor received a telegram from Mr. H. W. Fraser, President of the O. R. C., dated Cedar Rapids, Iowa, advising that he understood that it was proposed to remove the Road Conductors from the Bayway and Standard Oil drills and supplant them with yard men, contrary to existing agreements, and ad- [fol. 25] vising that if such action was taken, Road Conductors displaced from their jobs would be entitled to full pay for each of these assignments for each day they were denied service on them, and stating that he would send a Vice-President to the property, and requesting that such unlawful action not be taken. In reply thereto the officers of the Debtor advised Mr. Frazer that if, in his opinion, the proposed action with respect to manning those Bayway Crews when consummated would be in violation of rules of the Conductors and would constitute grounds for claims, that same could be handled in accordance with provisions of Section 3(i) of the Railway Labor Act as amended, which provides that in case of failure to reach an adjustment, disputes may be referred by petition of the parties or by either party to the national Railway Adjustment Board, and further advised him that appropriate officers of the Debtor would meet the Conductors' Committee representatives on March 10, 1943.

That on March 8, 1943, the officers of the Debtor received a telegram from the National Railway Mediation Board addressed jointly to them and to President Frazer of the O. R. C., advising that in relation to application of November 27, 1942, involving the reclassification of the Bayway drill assignments, the matter had been placed before the Board and that after due consideration the Board found that the claim was based on provisions of existing agreements and the Board did not consider that

Section 5 of the Railway Labor Act covering violations of agreements or claims to service based on previously existing rights were matters under their jurisdiction but that same were covered by Section 3(i) of the Act, and that they therefore had no jurisdiction over this dispute in its present status.

That on March 10, 1943, a meeting was held between the officers of the Debtor and representatives of the O. R. C. [fol. 26] at which no agreement could be reached, and the officers of the Debtor accordingly advised that the matter was one which they could submit to the National Railway Adjustment Board in accordance with the statement made by the President of the O. R. C. in the telegram of March 5, 1943, above referred to.

That following this meeting the bulletins referred to in paragraph 8 of said petition of the O. R. C. were posted, and the officers of the Debtor received applications from Yard Conductors for these Bayway crews.

That immediately upon receipt of the Order of this Court of March 15, 1943, and in obedience to the restraining order, these bulletins were cancelled and no change has been made.

That Respondents are in the position of neutrality as between two conflicting labor organizations and in the position that either may assert claims against the Debtor's estate, which claims, pursuant to the National Railway Labor Act, in the normal course would be handled by the National Railway Adjustment Board.

That Respondents naturally recognize that they are officers of this Court and as such should obey any orders which this Court may issue, but they feel that this matter is one of the type of many similar situations which are constantly being dealt with by the National Railway Adjustment Board, and that Board is familiar with problems which arise from such agreements, and it would not be to the interest of the parties to attempt to deal with this problem before this Court on an intervention in these reorganization proceedings. If a precedent is established by such an intervention to deal with questions arising from labor contracts the Court might be flooded with a multitude of such interventions. Furthermore, any decision taken by this Court without jurisdiction over and hearing all parties who would be affected by such a decision,

[fol. 27] would leave such other parties free to proceed to the Adjustment Board or to reopen the matter before this Court, and your Respondents, therefore, recommend that this Court dismiss the petition without prejudice to the petitioners to proceed to file a claim with the National Railway Adjustment Board in the manner provided by the National Railway Labor Act.

Yours &c., Shelton Pitney and Walter P. Gardner, Trustees of the Property of the Debtor, By Walter P. Gardner, Trustee.

Dated March 29, 1943.

(Here follows 1 photolithograph, side folio 28)

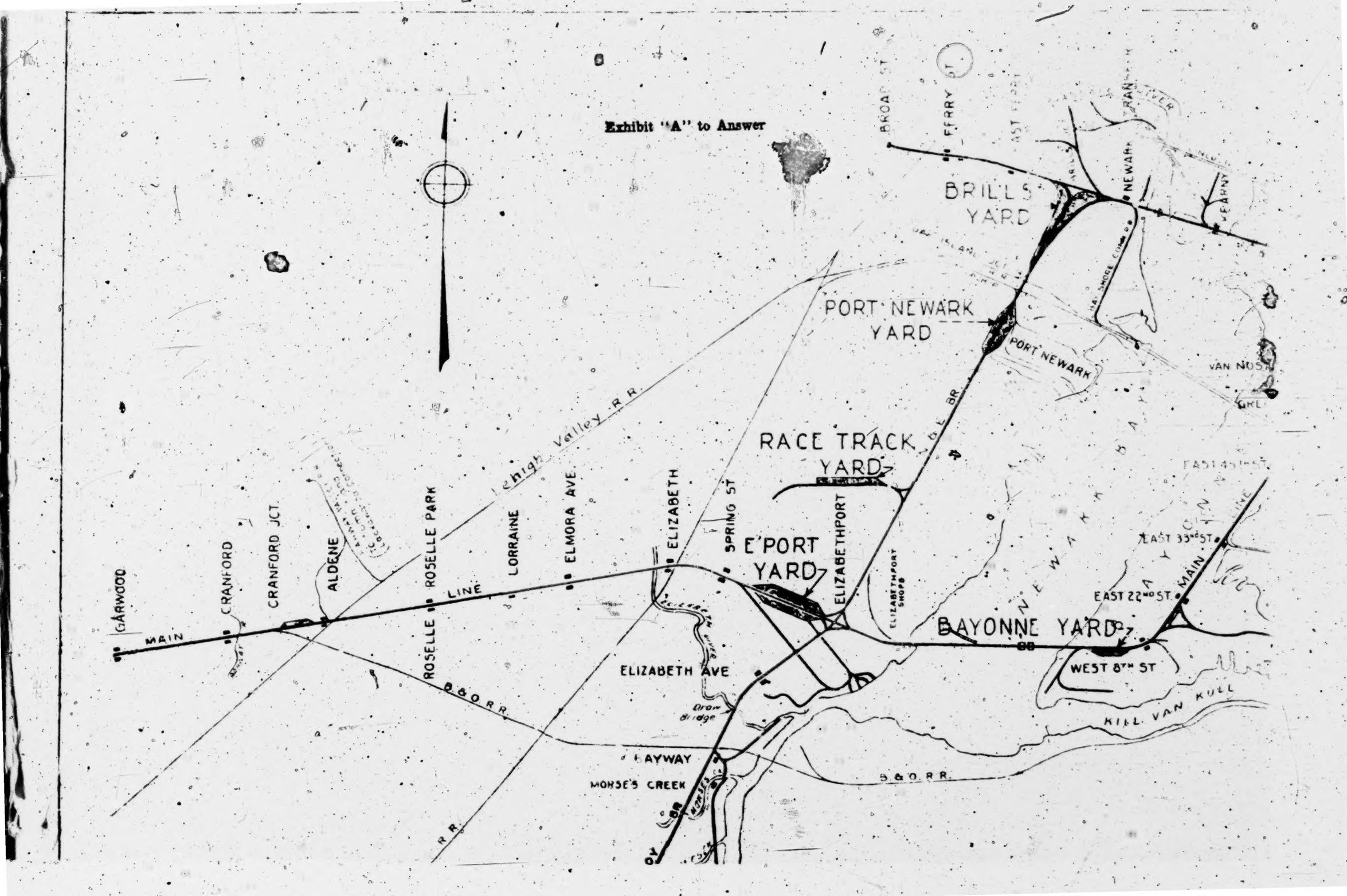
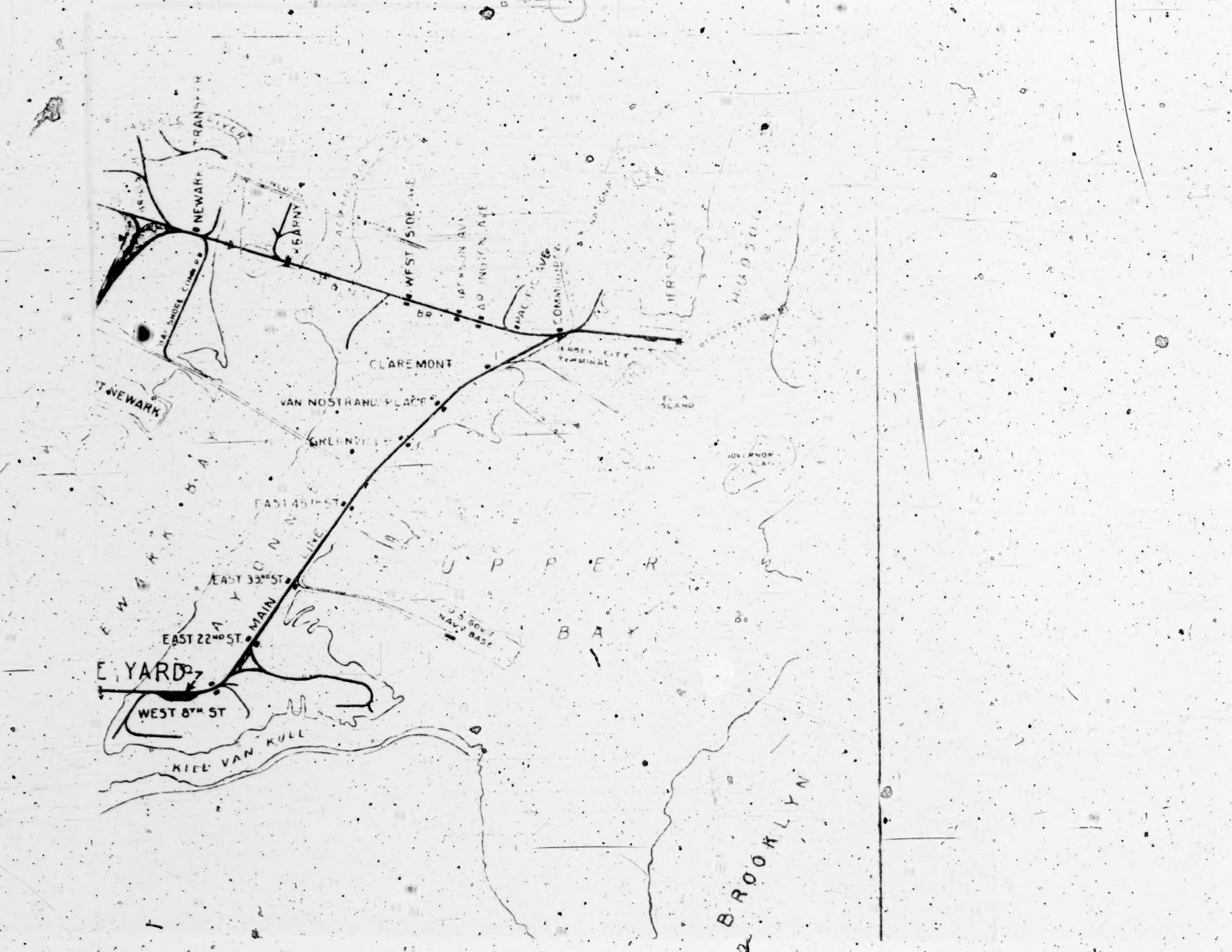


Exhibit "A" to Answer
BROAD ST
FERRY ST
BRILL'S YARD
NEWARK
PORT NEWARK YARD
PORT NEWARK
VAN NOST
RACE TRACK YARD
Lehigh Valley R.R.
ELMORA AVE
ELIZABETH
SPRING ST
E'PORT YARD
ELIZABETHPORT
ELIZABETHPORT SHOPS
LORRAINE
ROSELLE PARK
ROSELLE LINE
ALDENE
CRANFORD JCT.
CRANFORD
GARWOOD
MAIN
ELIZABETH AVE
B&O R.R.
Drawbridge
BAYWAY
MORSE'S CREEK
R.R.
NEWARK BAY
EAST 33RD ST.
EAST 22ND ST.
MAIN LINE
BAYONNE YARD
WEST 8TH ST
KILL VAN KULL
B & O R.R.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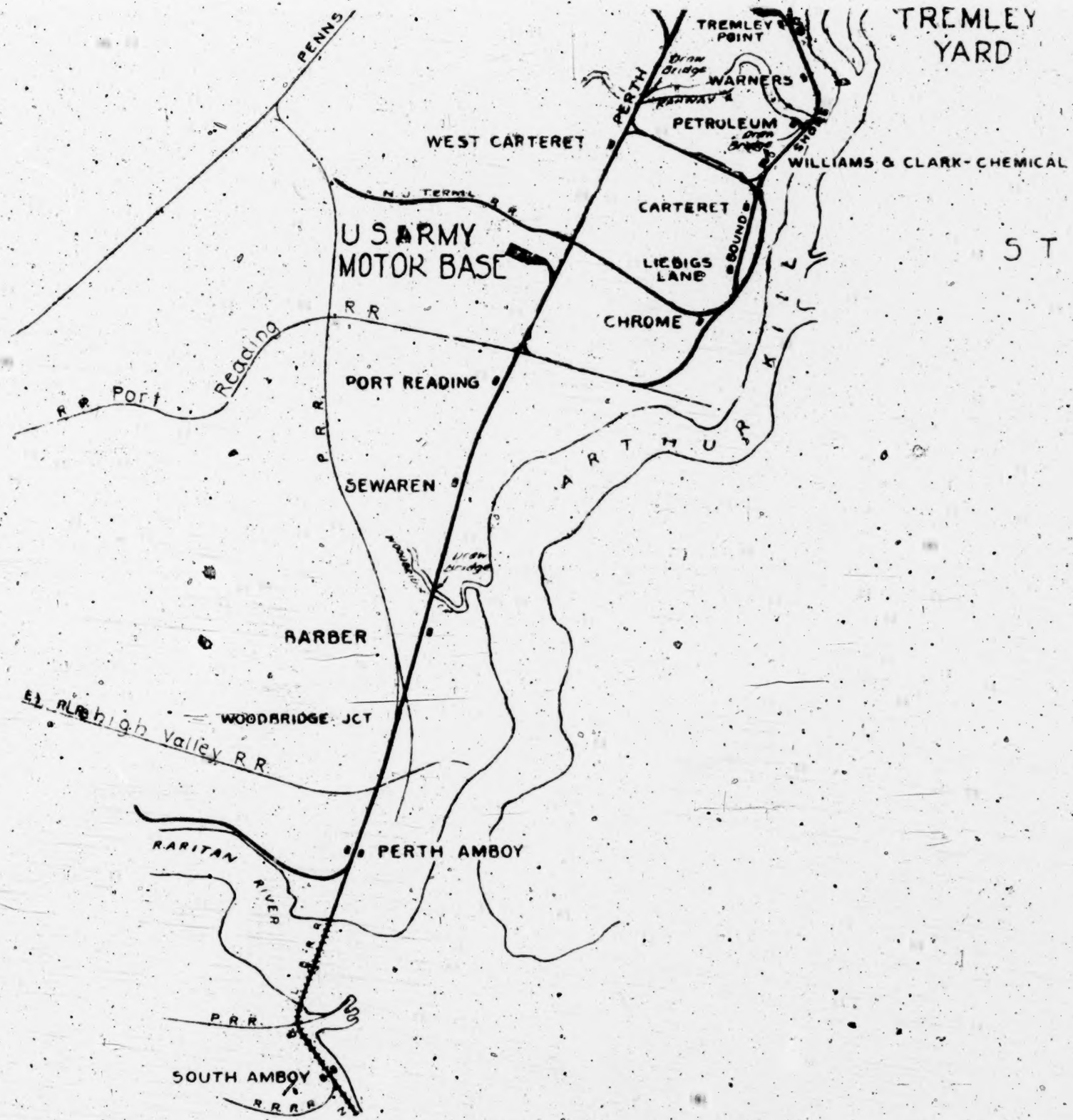
HACKENSACK RIVER
HARRISON
HARSIMUS COVE
NEWARK
CLAREMONT
VAN NOSTRAND PLACE
GREENVILLE
EAST 45TH ST
EAST 33RD ST
EAST 22ND ST
MAIN LINE
E. YARD
WEST 8TH ST
KILL VAN KULL
NEWARK BAY
UPPER BAY
BROOKLYN
JERSEY CITY
HUDSON
ELLIS ISLAND
LIBERTY ISLAND
U.S. GOVT NAVY BASE
PACIFIC AVE
COMMUNIPAW
JERSEY CITY TERMINAL


TREMLEY POINT
TREMLEY YARD
PENNS
WARNERS
PETROLEUM
WEST CARTERET
WILLIAMS & CLARK-CHEMICAL
N J TERML
CARTERET
U S ARMY MOTOR BASE
LIEBIGS LANE
CHROME
STATEN ISLAND
RR
Reading
R R Port
PORT READING
P R R
SEWAREN
ARTHUR KILL
BARBER
WOODBRIDGE JCT
Lehigh Valley R R
RARITAN RIVER
PERTH AMBOY
P R R
SOUTH AMBOY
R R R R
District N
switching

ISLAND

District No 5, Elizabeth and Elizabethport
switching limits shown in Red

TERMINAL DISTRICT

Scale-1"=1Mile

[fols. 29-30] EXHIBIT "B" TO ANSWER

Memorandum of Conference and Agreement between the Central Railroad Company of New Jersey, hereinafter sometimes called the "Carrier" (Shelton Pitney and Walter P. Gardner, Trustees), and the Brotherhood of Railroad Trainmen, hereinafter sometimes called the "Brotherhood":

Whereas: Under date of May 6th, 1929, the Carrier's then General Superintendent, J. W. Meredith, addressed a joint letter to Jos. A. Murphy, General Chairman, Brotherhood; Eugene Mahoney, General Chairman, B. of L. E.; B. H. Wenner, General Chairman, B. of L. F. & E.; and L. Parker Titus, General Chairman, O. R. C., reading as follows:

"In the recent arbitration case, Brotherhood of Railroad Trainmen versus Central Railroad of New Jersey, the question of switching limits came in quite strongly and as a result it is felt that we should set up and publish switching limits at the various points on our line, where they are recognized and obtained.

"The evidence in that case showed a number of decisions in which the right to establish switching limits was declared to be a right of the Management. Nevertheless, before publishing our switching limits I would like to have the comments of you gentlemen on what is proposed and I am, therefore, enclosing a blueprint copy of what we have in mind.

"Will be glad to have you write me your views. If you all agree to what is proposed, we will go ahead. In case there is a disagreement I shall ask for a joint meeting to discuss the matter further.

[fol. 31] "Irrespective of technical rights, I feel we should arrive at a mutually agreeable understanding if it is possible to do so," and

Whereas: Among the "switching limits" proposed was the following:

"'Elizabethport and Elizabeth'

"'Lorraine Tower' west 'Race Track' in N. & E. Branch, North.

"'Morse's Creek' on Perth Amboy Branch and Sound Shore Railroad South.

"West end of 'Newark Bay Bridge' east," and

Whereas, Concurrence on these switching limits was received as follows:

From Chairman Murphy, B. R. T., June 22nd, 1929
" " Mahoney, B. of L. E., May 13th, 1929
" " Wenner, B. of L. F. & E., July 6th, 1929
" " Titus, O. R. C., May 11th, 1929, and

Whereas: Thereafter on August 12th, 1929, Superintendent C. H. English of the "Central Division" issued "General Notice No. 56" "to all concerned," making effective, as of August 1st, 1929, among other switching limits those for "Elizabethport and Elizabeth" as set out above, and

[fol. 32] Whereas: The above action was taken, as stated in General Superintendent Meredith's letter of May 6th, 1929, because in the arbitration case, Brotherhood of Railroad Trainmen versus the Central Railroad of New Jersey, the question of switching limits was involved. Said involvement being "request of the Brotherhood of Railroad Trainmen for yard rates of pay for brakemen employed on 34 drill runs." Three (3) of these runs were known as "Bayway Drills" and two (2) as "Standard Oil Drills," and

Whereas: In the arbitration Award dated April 26th, 1929, there appears the following quoted statement:

"Crews on the following runs:

1 Red Bank Drill (during time crew is confined to switching limits)
3 Bayway Drills
2 Standard Oil Drills
1 E. & W. Junction Drill

"According to the evidence, perform work wholly within switching limits of yards, and in the judgment of the Board are performing work analogous to that of Yardmen, and these crews are awarded yard rates."

Therefore, on the basis of the above the brakemen on these crews were thereafter paid the yard rate, and

[fol. 33] Whereas: Brakemen holding yard seniority have, since March 25th, 1940, been assigned to the three Bayway Drills and two Standard Oil Drills, however, Road conductors have heretofore been assigned to these crews, and

Whereas: The Brotherhood has protested the assignment of Road conductors to these five crews operating within the switching limits of "Elizabethport and Elizabeth" as above outlined, and have filed a claim reading as follows:

"Time claim for the available extra yard conductors and 'yard brakemen eligible for promotion to yard conductor' for a minimum day plus the overtime made by road conductor for each day said road conductor was used to man each of those drill engines performing switching in the Bayway Section of the Elizabeth and Elizabethport switching district, viz.

First Standard Oil	in service time	7:00 A.M.
First Bayway	" " "	8:55 A.M.
Bayway Dragout	" " "	11:40 A.M.
Second Standard Oil	" " "	2:50 P.M.
Extra Bayway	" " "	2:50 P.M., and

Whereas: The Brotherhood has also filed various other claims known as Cases Nos. 94, 109, 117, 118, 134, 138 and National Railroad Adjustment Board Docket No. 13303, and [fol. 34] Whereas: The Brotherhood also requested that the "yard brakeman" rate of pay be applied to road brakemen assigned to certain "Road Drills" working between "Morses Creek" and "Perth Amboy" who perform industrial switching similar to that performed by other Road Drill crews in this general territory who were allowed the rate in 1929, and

Whereas: The parties hereto desire to dispose of these claims, requests, etc., by means of this agreement—therefore:

Effective March 16th, 1943

It is Agreed:

First. That the southern switching limit of District No. 5—"Elizabeth and Elizabethport," shall be "Morses Creek" on both the "Perth Amboy Branch" and "Sound Shore Railroad."

Second. That yard crews assigned to work within these switching limits shall be manned by "Yard conductors" and "Yard Brakemen."

Third. That yard rules shall govern the operations of yard crews working within these limits in the same manner that they govern the operations of yard crews in the other

switching districts of the "New York Harbor Terminal Territory."

[fol. 35] Fourth: That road brakemen manning the three Road Drills at Fremley and the Road Drills at Barber and Perth Amboy (latter two having home terminal at Port Reading), which Road Drills perform industrial switching, shall be allowed the yard brakeman's rate of pay. Provided, however, should additional Road Drills be assigned at these points, to perform industrial switching, the road brakemen thereon will also receive the yard brakeman's rate of pay.

Fifth: The Brotherhood of Railroad Trainmen hereby agrees to withdraw and will not further progress all claims now pending, or otherwise, prior to the effective date of this agreement that are in any way involved in connection with the dispute as to the southern switching limits of "District No. 5—Elizabeth and Elizabethport," manning of the three "Bayway Drills" and two "Standard Oil" Drills by Road Conductors, "Bayway Drill" working outside of switching limits, etc., and specific claims known and listed locally as Claims Nos. 94, 109, 117, 118, 134, 138 and Docket No. 13303, heard but not yet decided, by First Division of the National Railroad Adjustment Board.

Sixth: The duly authorized representatives of the Carrier and the Brotherhood do hereby mutually agree that the terms and provisions of this agreement is without prejudice to the rules invoked and cited by the Brotherhood in support of the claims elsewhere herein enumerated and spe-[fol. 36] cifically set forth in Item "Fifth" hereof.

For the Brotherhood of Railroad Trainmen. By: Dennis A. Giles, General Chairman. By: (S.) H. R. Woltman, Secretary. Approved: (S.) W. L. Reed, Vice-President.

For the Central Railroad Company of New Jersey. (Shelton Pitney & Walter P. Gardner, Trustees.) By: (S.) F. M. Falck, Assistant Vice-President.

Duly sworn to by Walter P. Gardner. Jurat omitted in printing.

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

To the Honorable Guy L. Fake, Judge of the United States District Court for the District of New Jersey:

The Brotherhood of Railroad Trainmen, a voluntary unincorporated association and a railway labor union, international in scope, W. L. Reed, Vice-President thereof, and Dennis A. Giles, Chairman of the General Grievance Committee on the Central Railroad of New Jersey for the Brotherhood of Railroad Trainmen, hereby move the Court for an order permitting them to intervene in this proceeding and to file a pleading in the nature of an answer to the petition filed herein. The rights of these petitioners are involved in the matters referred to in the said petition filed herein, and these petitioners were not parties to the [fol. 38] agreement upon which the Order of Railway Conductors, et al., rely for the relief prayed for in their petition.

Carey & Lane, Attorneys for Brotherhood of Railroad Trainmen, W. L. Reed, Vice-President thereof, and Dennis A. Giles, Chairman of the General Grievance Committee on the Central Railroad of New Jersey.

Harry Lane, of Counsel.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

The Brotherhood of Railroad Trainmen, a voluntary unincorporated association and a railway labor union international in scope, W. L. Reed, Vice-President thereof, and [fol. 39] Dennis A. Giles, Chairman of the General Grievance Committee on the Central Railroad of New Jersey, for the Brotherhood of Railroad Trainmen, intervenors, in answer to such portions of the petition filed herein as they are advised it is necessary to reply to, say:

1. The rights of the Brotherhood of Railroad Trainmen are involved in the matters set forth in the said petition,

and said Brotherhood is not made a party to the agreement of March 7, 1940, and its rights are not affected thereby.

2. Under its agreement with the Central Railroad Company of New Jersey and its trustees, the Brotherhood of Railroad Trainmen has the sole right to furnish crews for trains operating within the switching limit boundaries of what is designated in the bulletin of March 6, 1943, copy of which is annexed as Exhibit "B" to the petition filed herein by the Order of Railway Conductors of America, et al., as the "Elizabethport Yard."

3. For thirty-six years prior to March 7, 1940, the date of the agreement between the Central Railroad Company of New Jersey and its conductors represented by the Order of Railway Conductors, a copy of which is annexed to the said petition as Exhibit I, the Brotherhood of Railroad Trainmen had been furnishing yard conductors on transfer crews operating south of Morses Creek. The Order of Railway Conductors claimed that it was entitled to furnish the conductors on these trains operating south of Morses Creek as they were outside of the switching limit boundaries of the Elizabethport yard and what is known as a "road run," and the Central Railroad Company of New Jersey agreed that after March 25, 1940, road conductors would perform all conductors' service Morses Creek and south on [fol. 40] the Perth Amboy Branch, and thereafter the crews furnished by the Brotherhood of Railroad Trainmen were withdrawn from said runs. Thereafter the Brotherhood of Railroad Trainmen made a claim that it was entitled to furnish crews for the five runs referred to in the petition as being within the switching limit boundaries of the Elizabethport Yard. After due consideration of this claim, the General Railroad Company of New Jersey and its trustees recognized the justice of it and on March 6, 1943, issued the aforementioned bulletin, copy of which is annexed to said petition as Exhibit "B."

4. A similar controversy to that referred to in the petition herein was presented to the National Railroad Adjustment Board, Division No. 1, and said controversy was heard and determined by said Board in favor of the Brotherhood of Railroad Trainmen. This dispute involved rights of the said two labor unions involving the same switching limit boundaries as are involved in the said petition, and

it was determined that Elizabethport is a closed yard for yardmen and yardmen holding seniority in that yard were entitled to be used in the performance of worktrain service operating exclusively within the switching limits instead of roadmen.

5. It is not true, as set forth in the petition, that the road conductors, who have been working on the five runs referred to in the petition, commonly known as "Bayway Drills" have seniority rights which they will lose by reason of being taken off these runs. Nor is it a fact, as might be inferred from the petition, that these particular conducfors have been operating these runs for thirty-five years. As a matter of fact, these intervenors are advised and believe that the longest any of these conductors has been operating on these runs is approximately three years. As to their seniority rights, if taken off these runs, these particular conductors would not be deprived of them. They [fol. 41] still would maintain their seniority rights and have the right to replace conductors of a junior grade. Furthermore, when the road conductors displaced the yard conductors, in pursuance with the alleged agreement of March 7, 1940, referred to in the petition, these yard conductors' seniority rights were affected in the same manner as would be any seniority rights of the road conductor if displaced by yard conductors.

6. These intervenors beg leave to refer to and make part of this answer the answer filed by the trustees herein, except for the following:

The statement in the Answer of the trustees "that at the time of the making of the agreement of March 7, 1940, referred to in said petition of the O. R. C. and annexed as Exhibit 1 thereto, no claim had been filed by the B. of R. T. as to their right to have yard conductors man said drill crews referred to in said petition of the O. R. C." As a matter of fact this statement is not correct for the reason that claim was made by the B. of R. ~~T. prior to~~ March 7, 1940, that drill trains within the switching limit boundaries should be exclusively manned by yard crews which include yard conductors. These intervenors beg leave to refer particularly to a letter written by H. R. Woltman, Local Chairman, to Mr. R. F. Dickerson, Superintendent of the Central Railroad Company of New Jersey, under date of January 17,

1940, and to the minutes or memorandum of discussion in the Superintendent's office, Jersey City, on March 7, 1940, relative to the request of Local Chairman Woltman that yard crews be placed on the five drill engines working in the Bayway Section of the seniority district, defined in Trainmen's Rules as District No. 5, Elizabeth and Elizabethport, and the recognized switching limits, at which discussion it was specifically stated by Mr. Woltman that "the same [fol. 42] principle should apply; if they are entitled to everything outside of switching limits, then everything inside switching limits should belong to yardmen."

7. These intervenors, if petitioners, Order of Railway Conductors, et al., are permitted to invoke the provisions of the Bankruptcy Act, Title 11—77B, Section N, to set aside the agreement of March 6, 1943, referred to in the petition herein, reserve the right to invoke the provisions of said statute to set aside the agreement dated March 7, 1940, referred to in said petition.

8. These intervenors further say that this Court as a court of bankruptcy is without jurisdiction to determine the controversy presented by said petition, to wit: a labor dispute.

9. These intervenors further say that this Court, in its discretion, should not assume jurisdiction of a labor dispute such as is set forth in the said petition.

10. As to the matters set forth in the said petition which are not specifically answered herein, these intervenors have not sufficient knowledge to enable them to reply thereto and, therefore, do not admit the same but leave petitioners to their proof thereof.

These intervenors further say that in pursuance with agreements with the Central Railroad of New Jersey and its Trustees, the Brotherhood of Railroad Trainmen are entitled to the exclusive right of having the said five Bayway Drills operated by yard conductors who are members of their union and, therefore, pray that the petition of the Order of Railway Conductors, et al., be dismissed and these intervenors have such relief in the premises as may be proper.

[fol. 43] These intervenors further pray that said agreement of March 6, 1943, be put into effect and if it should

be determined that the Brotherhood of Railroad Trainmen are not entitled to have yard conductors man the five drill runs in question, that the Trustees be directed to re-establish yard conductors on the transfer runs South of Morses Creek, as they had been manned for many years prior to the agreement of March 7, 1940.

Carey & Lane, Attorneys for Aforesaid Intervenors.

Harry Lane, Of Counsel.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF REFERENCE, ETC.

This matter being opened to the Court on the continued return of the Order to Show Cause granted in the above entitled matter on March 15, 1943, in the presence of Carl [fol. 44] S. Kuebler, of Carpenter, Gilmour and Dwyer, appearing for petitioners, Howard L. Kern, General Counsel for the Debtor, appearing for the Trustees, and Shelton Pitney and Walter P. Gardner in person, Harry Lane of Carey & Lane, attorneys for Brotherhood of Railroad Trainmen, a voluntary unincorporated association and a railway labor union, international in scope, W. L. Reed, Vice-President thereof, and Dennis A. Giles, Chairman of the General Grievance Committee of the Central Railroad of New Jersey, for the Brotherhood of Railroad Trainmen; and the matter having been fully argued before the Court by counsel, the Trustees having filed their answer to the said petition and the Court being of the opinion that this controversy should be referred to the Standing Master, Augustus C. Studer, for a speedy determination, and that the stay contained in the Order to Show Cause of March 15, 1943, should be lifted, and that the Brotherhood of Railroad Trainmen, et al., having withdrawn their special appearance and having agreed to intervene in this matter;

It is on this fifth day of April, A. D. 1943, Ordered, that the said Brotherhood of Railroad Trainmen, a voluntary unincorporated association and a railway labor union, international in scope, W. L. Reed, Vice-President thereof, and Dennis A. Giles, Chairman of the General Grievance

Committee of the Central Railroad of New Jersey, for the Brotherhood of Railroad Trainmen, be and they are hereby permitted to intervene in this matter and to be heard herein and that their petition to intervene presented to the Court be and the same is hereby directed to be filed.

It is further Ordered that the provision in the said order to show cause bearing date the fifteenth day of March, 1943, directing "that Shelton Pitney, and Walter P. Gardner, Trustees of the Debtor and their subordinates who are the officers and employees of the Central Railroad of New [fol. 45] Jersey, be and they hereby are directed not to place in effect until the further order of the Court so much of the bulletin dated March 6, 1943," as is mentioned and referred to in said Order be and the same is hereby vacated and the Trustees left in their discretion to take such action in the matter as they may deem fit pending the determination of the cause or the further order of this Court.

It is further Ordered that the said petition filed herein and all proceedings thereunder be and the same are hereby referred to Augustus C. Studer, Esq., the Standing Master appointed in this matter to take such testimony as may be produced before him by any of the aforesaid parties hereto and to report his findings thereon and recommendations to this Court as speedily as may be convenient.

Dated, April 5, 1943.

Guy L. Fake, U. S. D. Judge.

[fol. 46] In United States District Court

[Title omitted]

Intermediate Report of Standing Master

An order was made herein under date of April 5, 1943, by the Honorable Guy L. Fake, United States District Court Judge, referring the petition heretofore filed herein, and all proceedings thereunder, to the undersigned Standing Master, to take such testimony as might be produced before him by any of the parties hereto and to report his findings thereon and recommendations to this Court as speedily as might be convenient.

Pursuant to that order, hearings were held at the Federal Building, Newark, New Jersey, on Monday, April 12th, from 10 A. M. until 4 P. M.; on Tuesday, April 13th, from 10 A. M. until 5 P. M.; on Wednesday, April 14th, from 10 A. M. until 1:30 P. M.; on Thursday, April 15th, from 11 A. M. until 4 P. M., and on Friday, April 16th, 1943, from 10 A. M. until 1 P. M.

The matter in controversy is a jurisdictional dispute between the Order of Railway Conductors of America, one of the petitioners herein, and the Brotherhood of Railroad Trainmen, one of the intervenors herein. It came before the Court on the petition of the Order of Railway [fol. 47] Conductors of America, a voluntary unincorporated association and a railway labor union, national in scope; H. W. Fraser, President thereof and Grover C. Apgar, General Chairman of the General Committee of Adjustment on the Central of New Jersey for the Order of Railway Conductors of America. The Brotherhood of Railroad Trainmen, a voluntary unincorporated association and a railway labor union, national in scope, W. L. Reed, Vice-President thereof and Dennis A. Giles, Chairman of the General Grievance Committee on the Central Railroad of New Jersey for the Brotherhood of Railroad Trainmen, filed an answer as intervenors. An answer was also filed by Shelton Pitney and Walter P. Gardner, Trustees of the Debtor above named, as respondents.

The petition alleges that because of a long-established custom and practice, and because of an agreement of March 7, 1940, between the Central Railroad Company of New Jersey and its conductors, represented by the Order of Railway Conductors of America, one of the petitioners herein, road conductors, represented by that petitioner as its bargaining agent, are entitled to operate on the Bayway and Standard Oil drills of the Debtor railroad, and more particularly referred to in the petition. The agreement of March 7, 1940, is attached to the petition as Exhibit 1 and is also marked as an exhibit in the cause, as Trustees' Exhibit 2.

The petition also alleges that as the result of an agreement dated March 6, 1943, between the carrier and the Brotherhood of Railroad Trainmen, on March 7, 1943, on all bulletin boards of the Central Division of the Debtor corporation, there was posted a bulletin, a true copy of which is annexed to the petition and marked Exhibit B, in which

bulletin, notice was given that applications would be received at the office of M. J. Haggerty, Terminal Train Master, Jersey City, New Jersey, from March 7th until March 11th, inclusive, for vacancies on the Bayway and [fol. 48] Standard Oil drills expressly referred to in the petition, and also hereinabove referred to, which positions were to be filled, in accordance with the terms of the said bulletin, on March 16, 1943, by members of the Brotherhood of Railroad Trainmen.

The petition also alleges that it is the intention of the Debtor and its Trustees and their employees to fill the five positions mentioned in the preamble of the agreement of March 7, 1940 (Trustees' Exhibit 2), with yard conductors, who are represented by the intervenor, the Brotherhood of Railroad Trainmen, as their duly accredited bargaining agent, the effect of which would be to displace road conductors, who at the time of the filing of the petition and for some time prior thereto, had been filling such positions and that to do so would change the working conditions of the road conductors to the extent of abrogating the agreement of March 7, 1940, between the Debtor and its conductors, represented by the Order of Railway Conductors of America.

The petition also alleges and the petitioners' counsel argued that the agreement of March 6, 1943, between the Debtor and the Brotherhood of Railroad Trainmen, was made in violation of U. S. C. A., Title 11, Section 205(n), insofar as it affects the Bayway and Standard Oil drills. That statute provides:

> "No judge or trustee acting under this title shall change the wages or working conditions of railroad employees except in the manner prescribed in sections 151 to 163 of Title 45, as amended June 21, 1934, or as they may be hereafter amended."

The petition prays:

"(1) That the Court may by order summarily direct the Court's trustees not to fill the said five drills with yard [fol. 49] conductors and not to violate the terms and conditions of the agreement made between your petitioners and the Central Railroad Company of New Jersey, the debtor, under date of March 7, 1940, on which date the said debtor

was under the control, supervision and in the possession of the Court and its officers.

"(2) That the Court may order and direct its trustees and their subordinates operating the Central Railroad Company of New Jersey, and particularly M. J. Haggerty, not to place in effect the bulletin annexed hereto, dated March 6, 1943, and marked Exhibit 'B,' insofar as the five drill jobs mentioned in the petition herein are concerned.

"(3) That the Court may by final order permanently enjoin and restrain its trustees, the debtor, and all of its officials and employees, from violating the contract dated March 7, 1940, aforesaid, so long as the same shall not be altered or amended in accordance with the provisions of the Railroad Labor Act or other applicable provisions of the law, and for such other and further relief as the Court may be pleased to grant."

Counsel for the petitioners argued that in entering into the agreement of March 6, 1943, U. S. C. A., Title 11, Section 205(n) was violated by the Trustees, because that agreement between the Debtor and the Brotherhood of Railroad Trainmen changed the working conditions of the road conductors, represented by the Order of Railway Conductors of America, and that in making the agreement, the Debtor, by its Trustees, had not proceeded in the manner prescribed in Sections 151 to 163 of the Railway Labor Act, U. S. C. A., Title 45 and particularly Section 156 of that Act. Counsel for the Brotherhood of Railroad Trainmen made a similar argument with reference to the agreement of March 7, 1940. [fol. 50] The petitioners invoked the jurisdiction of this Court when they filed their petition and sought the relief prayed for in it. The jurisdiction of the Court was questioned by counsel for the respondents, who argued that because the agreement of March 7, 1940, changed the working conditions of the members of their union and had been entered into in violation of U. S. C. A., Title 11, Section 205(n), the petition should be dismissed and the petitioners should be obliged to seek their relief under the provisions of the Railway Labor Act, as amended, U. S. C. A., Title 45, and not in this Court.

During the hearing, at the suggestion of counsel for the Brotherhood of Railroad Trainmen, the question of the jurisdiction of this Court to entertain this petition was

further presented to the Honorable Guy H. Fake, in Chambers, in the presence of counsel for all of the parties involved, as well as the Master. It was Judge Fake's direction that the question of jurisdiction should be determined first by the Master, who should proceed on that issue and make a report on it before taking up the merits involved outside of that issue. Judge Fake directed that counsel for the respective parties should confine themselves first to the issue of jurisdiction, giving the Master an opportunity to make a study of it, that they should file briefs with him and then let him conclude whether or not the Court has jurisdiction. The determination of that question required the taking of proof. Briefs were filed on behalf of all of the parties hereto, in which both the question of jurisdiction and the merits of the controversy were argued. These briefs have been carefully studied by the Master.

In the opinion of the Master, it is necessary to know the meaning of the words "working conditions," as used in U. S. C. A., Title 11, Section 205(n) and in the Railway Labor Act, U. S. C. A., Title 45, Sections 151 to 163, in order to determine whether or not this Court has juris- [fol. 51] diction to hear this petition. Cases were cited by counsel for the Order of Railway Conductors of America in an attempt to uphold this Court's jurisdiction, but neither counsel for the unions involved was able to furnish the Master with any authority construing the words "working conditions," as used in the statutes last above referred to.

In the case of *Missouri Pacific Railroad Co. v. Norwood*, 42 Federal Reporter (2d), p. 765, the Court, in a *per curiam* opinion, said at p. 773, with reference to the Labor Act of 1926:

> "It is argued that Congress, in that act, took over control of 'working conditions' of employees of interstate carriers and that 'working conditions' as there used, includes the number of men required in train and switching crews. In a sense, the number of men required to perform a task is one of the 'working conditions' of that task. However, such meaning is not necessarily included in such expression. Therefore, it is necessary to construe this act to determine if such meaning is to be found therein. * * *. The Labor Act of 1926 (44 Stat. 577, 578, 580, 582) includes 'working conditions.' Obviously these terms in each

of these acts have the same general meaning. They mean such conditions affecting the work of the employees as might be the subject of agreement between the carriers and the employees."

The last edition of "Words and Phrases," 1940, Vol. 45, under the heading "Working Conditions," p. 501, says:

> "'Working conditions' of employees of interstate carriers within Labor Act does not include number of men required in train and switching crews.
> [fol. 52] "'Working conditions' of employees of interstate carriers within Labor Act mean conditions properly subject of agreement with carriers."
> Citing Railway Labor Act, 45 U. S. C. A., Secs. 151-163; Missouri Pacific Railroad Co. v. Norwood (D. C., Ark.), 42 Federal Reporter (2d) 765, 773.

In the opinion of the Master, both agreements involve conditions as might be the subject of agreement between the carrier and the respective employees concerned in them, within the holding of *Missouri Pacific Railroad Co.* v. *Norwood*, 42 Federal Reporter (2d) p. 765, *supra*, but neither "changed working conditions," within the meaning of the provisions of U. S. C. A., Title 11, Section 205(n) and the Railway Labor Act, U. S. C. A., Title 45. That being so, it is the opinion of the Master that this Court has jurisdiction to entertain this petition and make a decision upon the merits.

Proof has already been offered by all the parties. However, inasmuch as the Court directed the Master to determine the question of jurisdiction first and to make a report upon it, an opportunity will be given to all of the parties to offer further proof before the controversy is decided on the merits.

Respectfully submitted, Augustus C. Studer, Jr.,
Standing Master

Dated, May 24, 1943.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS TO INTERMEDIATE REPORT OF STANDING MASTER

Order of Railway Conductors of America, H. W. Fraser, President, and Grover C. Apgar, General Chairman of the General Committee of Adjustment on the Central of New Jersey, the petitioners, hereby except to the intermediate report of the Standing Master to whom was referred the issues raised by the pleadings herein as follows:

1. The petitioners except to that portion of the report in which the Standing Master concludes that the agreement between the Trustees of the Central Railroad of New Jersey and the Brotherhood of Railroad Trainmen, dated March 16, 1943, did not "change working conditions" within the meaning of the provisions of U. S. C. A., Title 11, Section 205(n).

2. The petitioners except to that portion of the report in which the Standing Master concludes that the agreement between the Trustees of the Central Railroad of New Jersey and the Brotherhood of Railroad Trainmen, dated March 16, 1943, did not "change working conditions" [fol. 54] within the meaning of the provisions of the Railway Labor Act, U. S. C. A., Title 45, and in particular Section 156 thereof.

3. The petitioners contend that the conclusions referred to in Exceptions 1 and 2 are erroneous in fact and do not relate to the question of the jurisdiction of this Court.

The petitioners adopt and concur in the ultimate conclusion reached by the Standing Master in his report that this Court has jurisdiction of the subject matter of the petition and the intervening petitioners and files these exceptions for the purpose of preserving its rights to argue same at the proper time.

Dated, June 1, 1943.

Carpenter, Gilmour & Dwyer, Attorneys for Petitioners, Order of Railroad Conductors of America, H. W. Fraser, President, and Grover C. Apgar, General Chairman of the General Committee of Adjustment on the Central of New Jersey.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS TO INTERMEDIATE REPORT OF STANDING MASTER

The Brotherhood of Railway Trainmen, a voluntary unincorporated association and a railway labor union international in scope, W. L. Reed, Vice-President thereof, and Dennis A. Giles, Chairman of the General Grievance Committee on the Central Railroad of New Jersey, for the Brotherhood of Railroad Trainmen, intervening respondents, hereby except to the intermediate report of the Standing Master to whom was referred the issues raised by the pleadings herein as follows:

1. The intervening respondents except to that portion of the report in which the Standing Master concludes that the agreement between the Trustees of the Central Railroad of New Jersey and the Brotherhood of Railroad Trainmen, dated March 7, 1940, did not "change working conditions" within the meaning of the provisions of U. S. C. A., Title 11, Section 205(n).

2. The intervening respondents except to that portion of the report in which the Standing Master concludes that the agreement between the Trustees of the Central Railroad [fol. 56] of New Jersey and the Order of Railway Conductors, dated March 7, 1940, did not "change working conditions" within the meaning of the provisions of the Railway Labor Act, U. S. C. A., Title 45, and in particular Section 156 thereof.

3. The aforesaid intervening respondents contend that the conclusions contained in the intermediate report of the Standing Master in respect to the matters referred to in Exceptions 1 and 2 herein and Exceptions 1 and 2 of the exceptions filed by the Order of Railway Conductors of America, et al, relate to the question of the jurisdiction of this Court.

4. The aforesaid intervening respondents contend that in view of the fact that all of the evidence, both on the question of jurisdiction and the question of the merits having been taken that the matter is ripe for a final report of the Standing Master and that his intermediate report

should be withdrawn or any determination in respect thereto withheld and the Standing Master instructed to submit with all convenient speed his final report both on the question of jurisdiction and on the merits.

Dated, June 2, 1943.

Carey & Lane, Attorneys for Brotherhood of Railroad Trainmen, a voluntary unincorporated association and a railway labor union international in scope, W. L. Reed, Vice-President thereof, and Dennis A. Giles, Chairman of the General Grievance Committee on the Central Railroad of New Jersey, for the Brotherhood of Railroad Trainmen, intervening respondents.

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING HEARING

It appearing that the above entitled proceedings were referred to Augustus C. Studer, Standing Master, to take testimony and report thereon and that the said Standing Master has filed an intermediate report on the question of the jurisdiction of this Court to determine the issues raised in said proceedings, and the petitioners, Order of Railway Conductors of America, H. W. Fraser and Grover C. Apgar having filed exceptions to said report and further exceptions thereto having been filed by the intervening respondents, Brotherhood of Railroad Trainmen, W. L. Reed and Dennis A. Giles and said exceptions having been noticed for argument before this Court for the 7th day of June, 1943, and it further appearing that testimony has been taken before the Standing Master not only on the question of jurisdiction but also on the merits and the Court having considered the argument of counsel and being of the opinion that the argument of these exceptions should be postponed until the filing of the final report of the Standing Master,

[fol. 58] It is on this 7th day of June, 1943, on motion of Carpenter, Gilmour & Dwyer, attorneys for petitioners, Order of Railway Conductors, et als,

Ordered that the argument on the exceptions filed by the petitioners, Order of Railway Conductors, et als, as well as the argument on the exceptions filed by the intervening respondents, Brotherhood of Railroad Trainmen, et als, be and hereby are postponed until such time as the Standing Master has filed his final report and exceptions, if any, have been filed thereto.

Further Ordered that said exceptions to the intermediate report of the Standing Master may be brought on for argument by any exceptant upon five days' notice to the adverse party but not until sufficient time has elapsed after the filing of the Standing Master's final report to determine whether any exceptions have been filed thereto to the end that exceptions to the intermediate report may be argued at the same time any exceptions to the final report are brought on for argument.

Guy L. Fake, U. S. D. J.

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT OF STANDING MASTER

An intermediate report, dated May 24, 1943, has already been filed herein, in which the Master reported that in his opinion this Court has jurisdiction to determine this controversy upon the merits. That determination is made herein.

On its merits, the controversy is between two railroad unions, the Order of Railway Conductors of America, one of the petitioners herein, and the Brotherhood of Railroad Trainmen, one of the intervenors herein.

As has been stated more particularly in the intermediate report of the Standing Master, the petition seeks relief against the effect upon the members of the petitioner union of a contract effective March 16, 1943, between the carrier and the respondent union (Trustees' Exhibit 10). This contract gives the members of the Brotherhood of Railroad Trainmen the right to work on certain drills as far South as the Southerly side of Morse's Creek on the Perth Amboy Branch of the carrier, notwithstanding certain provisions, hereinafter mentioned, of an earlier agreement.

[fol. 60] dated March 7, 1940, between the carrier and the petitioner, Order of Railway Conductors of America (Trustees' Exhibit 2):

On the first day of the hearing, namely, April 12, 1943, E. M. Falck, Assistant Vice-President in Charge of Personnel of the Debtor, was called and sworn on behalf of the Trustees of the Debtor. Mr. Falck was cross examined at length by counsel for both of the unions which are parties hereto. Among other things, it appeared from his testimony that in August of 1929 the carrier, in a letter to four railroad unions, including the two which are parties hereto, established, as it had the authority to do, what are known as switching limit boundaries (Trustees' Exhibit 3). The effect of establishing these boundaries was to fix a line of demarcation between yard runs within the switching limits and road runs outside of the switching limits. The Southerly side or bank of Morse's Creek was established as the Southerly boundary of the Elizabethport switching limits and the evidence shows that the five drills in question lie within the switching limit boundaries of the Elizabethport yard.

There was some disputed testimony to the effect that switching limits never had been established, but, ultimately, it was admitted as a fact by all of the parties to this litigation, and particularly the two railroad unions involved, that the switching limits were established in August of 1929. The effect of the establishment of switching limits was that yard men, represented by the Brotherhood of Railroad Trainmen, should not perform work outside of them, except in cases of emergency and that road men, represented by the Order of Railway Conductors of America, should not perform work within them.

There was also testimony by Mr. Falck to the effect that under all normal conditions and rulings of the National Adjustment Board, yard men are entitled to work within switching limits and road men outside.

[fol. 61] There are in evidence what were referred to as the basic agreements between the Railroad and the two unions interested herein. For the Order of Railway Conductors of America, the basic agreement is Trustees' Exhibit 1, captioned "Rules Affecting the Employment and Pay of Conductors," effective August 1, 1927. The basic agreement for the Brotherhood of Railroad Trainmen is Trustees' Exhibit 9 and is entitled "Rules Affecting the Em-

ployment and Pay of Trainmen & Yardmen." These rules were effective May 1, 1928, and the rates mentioned therein were effective December 1, 1926. In the opinion of the Master, these basic agreements or contracts and the switching limits agreement of August, 1929, must be considered together.

The agreement of March 7, 1940, between the petitioner, Order of Railway Conductors of America, and the carrier (Trustees' Exhibit 2) provides, in part, as follows:

> "For many years, Road Conductors have performed all of the service on the Perth Amboy Branch, Bayway and points South, and all of the service on the Sound Shore Railroad. In May, 1935, five crews tying up at Elizabethport were changed to tie up at Port Reading and, subsequent to that date, men employed as Yard men were permitted to operate runs, known as Transfer Runs and handle the business on the Perth Amboy Branch. This question has been in controversy ever since that time and finally was submitted to the National Railroad Adjustment Board, First Division, by the Order of Railway Conductors.
>
> "At a conference this date, the following Agreement was entered into to settle this question:
>
> "Agreement:
>
> "After March 25th, 1940, Road Conductors will perform all conductors' service Morses Creek and South on the Perth Amboy Branch.
>
> [fol. 62] "No other change from the present method of assigning Conductors to service operated in the territory described in the preamble hereof, will be made except by agreement between the parties hereto."

Bayway is North of the Southerly boundary of the switching limits at the Southerly end of Morse's Creek and is within the switching limits fixed by the railroad in August of 1929. In the agreement of March 7, 1940, there is recognition by the Order of Railway Conductors of America of Morse's Creek as the Southerly limit of the Elizabethport yard, where the agreement says:

> "After March 25th, 1940, Road Conductors will perform all conductors' service Morses Creek and South on the Perth Amboy Branch."

Testimony was given by the Order of Railway Conductors of America that for many years before and after 1940 road conductors had worked on the Bayway and Standard Oil drills which are within the switching limits. (See the testimony of Howard P. Lauder, Edward J. Gallagher, John A. Pollard and Arthur P. Riddle.) Testimony was given on behalf of the respondent, Brotherhood of Railroad Trainmen, that yard conductors had operated on transfer runs South of Morse's Creek before and after 1940. (See the testimony of Andrew Cavicchia, William J. Anthes, John J. Tiernan, Joseph L. Freer and Harry R. Woltman.) This testimony shows that each union from time to time had encroached upon the territory of the other union, within and without switching limits, until one or the other union objected to the carrier against such encroachment.

It appears from the evidence, that prior to the execution of the contract of March 7, 1940, between the carrier and the Order of Railway Conductors of America, the [fol. 63] latter protested to the carrier against the operation by the yard men South of Morse's Creek. They based their protest upon Rule 34 of the so-called basic agreement between the carrier and the Conductors (Trustees' Exhibit 1).

That rule provides:

> "Where regularly assigned to perform service within switching limits yardmen shall not be used in road service when road crews are available, except in case of emergency. When yardmen are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay, and without any deduction therefrom for the time consumed in said service."

There was in effect at the time of that protest, in the basic agreement between the carrier and the trainmen and yard men (Trustees' Exhibit 9) a rule known as Rule 28, which corresponded almost verbatim with Rule 34 (Trustees' Exhibit 1). The rule reads as follows:

> "Rule 28—Arbitraries and Special Allowances
>
> "Where regularly assigned to perform service within switching limits, yardmen shall not be used in road

service when road crews are available, except in case of emergency. When yard crews are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service.'"

[fol. 64] By these rules and switching limits agreement (Trustees' Exhibit 3) the territory had been fixed over which the members of the respective unions hereto had the right to operate.

In the opinion of the Master, the carrier could not, by its agreement with the road men (Trustees' Exhibit 2) deprive the yard men of their right to operate within switching limits, as that right was given to them under their basic agreement with the carrier (Trustees' Exhibit 9) and as further established in the switching limits agreement (Trustees' Exhibit 3). Considering the basic agreements between the railroad and the two unions which are parties hereto (Trustees' Exhibits 1 and 9, respectively), and the switching limits agreement (Trustees' Exhibit 3), neither union, as against the other, could obtain any prescriptive right, by user or long established practice.

In the opinion of the Master, so much of the agreement of March 7, 1940, as purported to bind the carrier not to change the then method of assigning conductors to service operated in the territory described in the preamble thereof, was good, only so long as there was no objection to such assignment by the yard conductors, through their bargaining agent, the Brotherhood of Railroad Trainmen. The proof shows that almost immediately after the execution of the agreement of March 7, 1940, the Brotherhood of Railroad Trainmen did object to the manning of the drills within switching limits by road conductors. As the result of these objections, the agreement effective March 16, 1943, with the Brotherhood of Railroad Trainmen (Trustees' Exhibit 10) was made. By its terms, it recognizes the right of the members of that union to man the drills in question within the switching limits with yard conductors.

The agreement of March 7, 1940 (Trustees' Exhibit 2), insofar as it gave to the road conductors the right to perform all services South of Morse's Creek, was a recogni-

tion of their right to do so, founded upon their basic [fol. 65] agreement with the carrier and the switching limits agreement. The same can be said of the agreement effective March 16, 1943, between the carrier and the Brotherhood of Railroad Trainmen, insofar as the rights of the members of that union are concerned with reference to operation within switching limits.

In the opinion of the Master, the agreement of March 7, 1940, insofar as it purported to preserve or give rights to the Order of Railway Conductors of America within switching limits, was necessarily subject to the assertion by the Brotherhood of Railroad Trainmen of its superior rights within said switching limits. Upon the assertion of those rights and the recognition of them, resulting in the making of the agreement effective March 16, 1943 (Trustees' Exhibit 10), the agreement of March 7, 1940, with the Order of Railway Conductors of America, ceased to have any force or effect, insofar as it applied, or purported to apply, to the services of the road conductors North of the Southerly side of Morse's Creek. Until the agreement effective March 16, 1943, was executed with the Brotherhood of Railroad Trainmen, the Order of Railway Conductors of America enjoyed rights within the switching limits to which it was not entitled. Except as just stated, the agreement of March 7, 1940, remains in full force and effect, but it furnishes the petitioners no ground upon which to base their claim for the relief sought by them in their petition.

It is the conclusion of the Master that the petitioners are not entitled to the relief prayed for in the petition and, accordingly, the petition should be dismissed.

Handed up with this report are:

1. Stenographic transcript of the testimony;

2. Trustees' Exhibits, T-1 to T-15, inclusive;

[fol. 66] 3. Petitioners' Exhibits, 1 to 12, inclusive;

4. Respondent's Exhibits, 1 to 5, inclusive;

5. Brief of Order of Railway Conductors of America, et al.;

6. Brief of Respondents, Brotherhood of Railroad Trainmen, et al.;

7. Reply Brief of Order of Railway Conductors of America, et al.;

8. Letter, dated May 6, 1943, from Harry Lane, counsel for respondents, Brotherhood of Railroad Trainmen, et al., commenting upon reply brief of Order of Railway Conductors of America;

9. Brief of Trustees; and

10. Stipulation, dated June 8, 1943, with reference to Exhibit P-13.

Respectfully submitted, Augustus C. Studer, Jr., Standing Master.

Dated, June 25th, 1943.

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS TO REPORT OF STANDING MASTER, DATED JUNE 25, 1943

Order of Railway Conductors of America, H. W. Fraser, President, and Grover C. Apgar, General Chairman of the General Committee of Adjustment on the Central of New Jersey, the petitioners, hereby except to the report of the Standing Master, dated June 25th, 1943, as follows:

1. The petitioners except to that portion of the report of the Standing Master in which he concludes that the petitioners are not entitled to the relief prayed for in the petition and that the petition should be dismissed.

2. The petitioners except to that portion of the report of the Standing Master in which he concludes that the effect of establishing the limits of the Elizabethport yard in 1929 was to fix a line of demarcation between yard runs within the switching limits and road runs outside of the switching limits.

3. The petitioners except to that portion of the report of the Standing Master in which he concludes that the effect of the establishment of switching limits was that yard [fol. 68] men, represented by the Brotherhood of Railroad

Trainmen, should not perform work out of them, except in case of emergency and that road men, represented by the Order of Railway Conductors of America, should not perform work within them.

4. The petitioners except to that portion of the report of the Standing Master in which he concludes from the testimony of Mr. Falck that under all normal conditions and rulings of the National Adjustment Board yard men are entitled to work within switching limits and road men outside.

5. The petitioners except to that portion of the report of the Standing Master in which he concludes that the establishment of the switching limits, by the management, was as a result of an agreement reached through collective bargaining with the certified representatives of the crafts and classes involved.

6. The petitioners except to that portion of the report of the Standing Master in which he concludes that in the agreement of March 7, 1940, there is recognition by the Order of Railway Conductors of America of Morse's Creek as the southerly limit of the Elizabethport yard.

7. The petitioners except to that portion of the report of the Standing Master in which he concludes that testimony was given on behalf of the respondent, Brotherhood of Railroad Trainmen, that yard conductors had operated on transfer runs south of Morse's Creek before and after 1940.

8. The petitioners except to that portion of the report of the Standing Master in which he concludes that the operation of transfer runs South of Morse's Creek, either [fol. 69] before or after 1940, by regularly assigned yard men working under yard schedules and yard rates of pay had any significance or bearing upon the rights of the road conductors working under the road conductors' schedule and receiving road rates of pay to operate the Bayway and Standard Oil drills within switching limits, in the same manner as they had operated them for many years before the establishment of switching limits.

9. The petitioners except to that portion of the report of the Standing Master in which he concludes that the road conductors, or the Order of Railway Conductors, had

encroached upon the territory of the yard conductors or the Brotherhood of Railroad Trainmen by the manning or operating of the Bayway and Standard Oil drills within the switching limits after the establishment of switching limits in 1929, in the same manner that they had operated said road drills for many years before 1929 and from 1929 until 1943.

10. The petitioners except to that portion of the report of the Standing Master in which he concludes that there was any oral testimony establishing, or purporting to establish valid agreements or customs, or practice, that regularly assigned road crews, on regularly assigned road "runs," existing in service before the establishing of switching limits, should not continue as before; or establishing, or purporting to establish, that yard conductors and yardmen were entitled to exclusively man all service operating exclusively within switching limits.

11. The petitioners except to that portion of the report of the Standing Master in which he concludes that by Rule 34 of the basic agreement of the Order of Railway Conductors of America and Rule 28 of the Brotherhood of Railroad Trainmen and the switching limits agreement, [fol. 70] the territory had been fixed over which the members of the respective unions had the right to operate.

12. The petitioners except to that portion of the report of the Standing Master in which he concludes that the provisions of Rule 34 (Trustees' Exhibit 1), and Rule 28 (Trustees' Exhibit 9), providing, in part, that "* * * Where regularly assigned to perform service within switching limits, yardmen shall not be used in road service when road crews are available, except in case of emergency. * * *" are to be interpreted or construed as providing, either in conjunction with or without the establishing of switching limits (Trustees' Exhibit 3), that "yardmen" have the exclusive right to man all service exclusively within switching limits, and that said rules should be interpreted and read as though they had recited "Road conductors, notwithstanding they have held and manned road runs under regular assignments, working under road schedules and road rates of pay, shall not when switching limits are established by the management, operate such service exclusively within switching limits, but after the

establishment of switching limits by the management, all service exclusively within such switching limits shall be manned exclusively by yardmen."

13. The petitioners except to that portion of the report of the Standing Master in which he concludes that the Carrier could not, by its agreement with the road men (Trustees' Exhibit 2), deprive the yardmen of their right to operate within switching limits, and that the yardmen were given the exclusive right to man all service within switching limits under the basic agreement with the Carrier (Trustees' Exhibit 9), and by the establishment of switching rights (Trustees' Exhibit 3), and to the conclusion and interpretation placed upon the basic agree- [fol. 71] ments and Trustees' Exhibit 3, establishing switching limits, that yardmen were given the exclusive right to operate all service within switching limits.

14. The petitioners except to that portion of the report of the Standing Master in which he concludes that neither Union, as against the other, could obtain any prescriptive right, by user or long established practice and that the Carrier could not by its agreement with the roadmen (Trustees' Exhibit 2) deprive the yard men of their right to operate within switching limits.

15. The petitioners except to that portion of the report of the Standing Master in which he concludes that the acts and conduct of the parties, i. e., the Carrier, Brotherhood of Railroad Trainmen and the Order of Railway Conductors, showing the interpretation placed upon Rule 34 of the Conductors' Agreement (Trustees' Exhibit 1), Rule 28 of the Trainmen's Agreement (Trustees' Exhibit 9), and the decision of the management's establishment, for the first time, switching limits (Trustees' Exhibit 9); should be ignored and not considered, notwithstanding the undisputed testimony and record that no construction and interpretation as concluded by the Master was ever placed upon said agreements, by any of the parties involved in this litigation, from the making of said basic agreements on the establishment of the switching limits in 1929 until 1943 when the agreement of March 16, 1943, was made between the Carrier and the respondent union (Trustees' Exhibit 10).

16. The petitioners except to that portion of the report of the Standing Master in which he concludes that so much of the agreement of March 7, 1940, as purported to bind the Carrier not to change the then method of assigning conductors to service operated in the territory de-
[fol. 72] scribed in the preamble thereof, was good, only so long as there was no objection to such assignment of the yard conductors.

17. The petitioners except to that portion of the report of the Standing Master in which he concludes that the agreement of March 16, 1943, with the Brotherhood of Railroad Trainmen and the Carrier (Trustees' Exhibit 10) simply recognized an existing and theretofore established right of the yardmen to man the Bayway and Standard Oil drills, operating exclusively within the switching limits with the yard conductors.

18. The petitioners except to that portion of the report of the Standing Master in which he concludes that the agreement effective March 16, 1943 (Trustees' Exhibit 10), was simply a recognition of the rights of the Brotherhood of Railroad Trainmen to operate all service exclusively within switching limits and that such right to man all service exclusively within switching limits was provided for in the basic agreement with the Trainmen (Trustees' Exhibit 9).

19. The petitioners except to that portion of the report of the Standing Master in which he concludes that the agreement of March 7, 1940, insofar as it purported to preserve or give rights to road conductors within switching limits, was subject to the superior right to be asserted by the Brotherhood of Railroad Trainmen to operate exclusively all service within switching limits.

20. The petitioners except to that portion of the report of the Standing Master in which he concludes that upon the assertion of the claimed right of the Brotherhood of Railroad Trainmen to operate exclusively all service with-
[fol. 73] in switching limits, the agreement of March 7, 1940, with the Order of Railway Conductors of America, ceased to have any force or effect insofar as it applied to the manning of the regularly assigned road runs, known as the Bayway and Standard Oil drills, which had been manned

and operated by road conductors, as shown by the undisputed evidence, for more than forty (40) years, under road schedules and under road rates of pay, both before and after the management established switching limits.

21. The petitioners except to that portion of the report of the Standing Master in which he concludes that until the agreement effective March 16, 1943, was executed with the Brotherhood of Railroad Trainmen, the Order of Railway Conductors of America enjoyed rights within the switching limits to which it was not entitled.

22. The petitioners except to that portion of the report of the Standing Master in which he concludes that the agreement of March 7, 1940, furnished petitioners no ground upon which to base their claim for the relief sought by them in their petition.

23. The Standing Master having previously filed an intermediate report on the question of jurisdiction and having made the same determination herein, your petitioners repeat their exceptions to the intermediate report of the Standing Master with the same force and effect as if set forth herein in full.

Dated, July 7th, 1943.

Carpenter, Gilmour & Dwyer, Attorneys for Petitioners, Order of Railway Conductors of America, H. W. Fraser, President, and Grover C. Apgar, General Chairman of the General Committee of Adjustment on the Central of New Jersey.

[fol. 74] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

No. 29778

In the Matter of CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor

On Exceptions to Standing Master's Report.

Appearances:

Howard L. Kern, Esq., of Counsel for Debtor.

Messrs. Carpenter, Gilmour & Dwyer, by Carl S. Kuebler, Esq., and V. C. Shuttleworth, Esq., Attorneys for the Order of Railway Conductors.

Messrs. Carey & Lane, by Harry Lane, Esq., Attorneys for the Brotherhood of Railway Trainmen.

OPINION

FAKE, District Judge:

The issues here arise out of a conflict between two Unions, each claiming certain rights to function within the [fol. 75] yard or switching limits established by the Railroad Company.

In the year 1929 the Railroad Company established switching limits at Elizabethport and Elizabeth as follows:

> "'Lorraine Tower' west 'Race Track' in N. & E. Branch north. 'Morses Creek' on Perth Amboy Branch and Sound Shore Railroad south. West end of 'Newark Bay Bridge' east."

The fixing of these limits was within the power of the Railroad Company and the two Unions, on consultation, acquiesced. Thereafter it appears that the two Unions overlapped and the members of each functioned more or less within as well as outside the switching limits.

In 1935 and 1936 the Order of Railway Conductors complained that members of the Brotherhood of Railroad Trainmen were functioning outside the switching limits south of Morse's Creek and called attention to their Rule 34 which had been agreed to by the Railroad Company in 1927. This rule provides that "* * * yardmen shall not be used in road service when road crews are available, except in case of emergency."

On March 7, 1940, the Railroad Company agreed with the Order of Railway Conductors that "After March 25, 1940, Road Conductors will perform all Conductors' service south of Morse's Creek and south on the Perth Amboy Branch." Thus eliminating the services of the members of the Brotherhood of Railroad Trainmen outside the switching limits.

The Master has found as a fact that the dividing line between the territories of these two Unions is fixed by the switching limits and that roadmen should not perform work within switching limits and yardmen should not perform work outside switching limits.

[fol. 76] Shortly after the agreement of March 7, 1940, was entered into, the Brotherhood of Railroad Trainmen com-

plained that members of the Order of Railway Conductors were being employed within the switching limits, and the Railroad Company agreed as of March 16, 1943, that the members of the Order of Railroad Conductors should not be so employed. On this issue was joined.

Upon a careful study of the record and the briefs and after hearing oral argument, I am of the opinion that the findings of the Master should be affirmed. He has stated the reasons in his report and nothing will be gained by restating them here.

[fol. 77] In United States District Court for the District of New Jersey

In Proceedings for a Reorganization of a Railroad

No. 29778

In the Matter of The Central Railroad Company of New Jersey, Debtor

On Petition of Order of Railway Conductors of America, et al., for an Order Partially Cancelling Bulletin Dated March 6, 1943, and to Prevent the Displacement of Five Conductors.

Decree Confirming Intermediate Report and Final Report of Standing Master and Dismissing Petition

This matter coming on to be heard on motion of Harry Lane, Esq., of Carey & Lane, attorneys for the Brotherhood of Railroad Trainmen, a voluntary unincorporated association and a railway labor union, international in scope, W. L. Reed, Vice-President thereof, and Dennis A. Giles, Chairman of the General Grievance Committee of the Central Railroad of New Jersey, for the Brotherhood of Railroad Trainmen, intervening respondents, for the entry of a decree confirming the intermediate report, dated May 24, 1943, and the final report, dated June 25, 1943, of Augustus C. Studer, the Standing Master to whom the matter was referred, in the presence of Carl S. Kuebler, of Carpenter, Gilmour & Dwyer, the attorneys for Order of Railway Conductors of America, H. W. Fraser, President and Grover C. Apgar, General Chairman of the Gen-

eral Committee of Adjustment of the Central Railroad of New Jersey, appearing in opposition to the confirmation of the said intermediate report and final report of the Standing Master, and in the presence of Howard L. Kern, [fol. 78] General Counsel of The Central Railroad of New Jersey, appearing for the Trustees appointed herein at their request, and dismissing the petition filed herein; and the Court having considered the exceptions filed by the said petitioners to said reports, the pleadings filed herein, the testimony taken and the exhibits admitted in evidence before the Standing Master, the intermediate report and the final report of the Standing Master, and having heard and considered the argument of counsel for all parties;

And the Court being of the opinion that the exceptions filed by the said petitioners to the intermediate report and the final report of the Standing Master should be overruled and dismissed and that the intermediate report and the final report of the Standing Master should be confirmed for the reasons set forth in said report, and in the opinion of this Court filed herein on November 12, 1943, and that a decree dismissing the petition filed herein should be granted;

It Is, on this 22nd day of November, A. D. 1943, Ordered, Adjudged and Decreed that:

1. The members of the Brotherhood of Railroad Trainmen have the exclusive right to man the drills referred to in the petition filed herein and in the agreement effective March 16, 1943, between the Trustees of the Central Railroad of New Jersey and the Brotherhood of Railroad Trainmen, within the switching limit boundaries of the Elizabethport Yard.

2. The said agreement effective March 16, 1943, is in nowise in violation of U. S. C. A., Title 11, Section 205(n) or Sections 151 to 163 of the Railway Labor Act, as amended, U. S. C. A., Title 45.

[fol. 79] 3. The exceptions filed by the petitioners herein to the intermediate report and the final report of the Standing Master be and the same are hereby overruled and dismissed and the intermediate report, dated May 24, 1943, and the final report, dated June 25, 1943, of Augustus C. Studer as Standing Master be and the same are hereby in all respects ratified and confirmed.

4. The petitioners are not entitled to the relief prayed for in their petition filed herein, and the relief prayed for in said petition be and the same is hereby denied and the petition be and the same is hereby dismissed with costs.

5. The Trustees of the Central Railroad Company of New Jersey be and they are hereby directed to forthwith make effective and carry out the terms of the said agreement effective March 16, 1943.

It is further Ordered, Adjudged and Decreed that the petitioners, Order of Railway Conductors of America, H. W. Fraser, President and Grover C. Apgar, General Chairman of the General Committee of Adjustment on the Central of New Jersey, pay to the Brotherhood of Railroad Trainmen, a voluntary, unincorporated association and a railway labor union, international in scope, W. L. Reed, Vice-President thereof, and Dennis A. Giles, Chairman of the General Grievance Committee of the Central Railroad of New Jersey, for the Brotherhood of Railroad Trainmen, intervening respondents, or to Carey & Lane, their attorneys, their costs to be taxed, and that the said intervening respondents do have execution therefor, according to the practice of this Court.

Guy L. Fake, U. S. D. J.

[fol. 80] UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8556

In the Matter of CENTRAL R. R. Co. OF NEW JERSEY, Debtor

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, President thereof, et al., Appellants

vs.

SHELTON PITNEY and WALTER P. GARDNER, Trustees of Debtor, et al., Appellees

Appeal from the District Court of the United States for the District of New Jersey

And now, to-wit: this 20th day of June A. D. 1944, it is ordered that Hon. Sam G. Bratton, Circuit Judge for the 10th Circuit, and Hon. William H. Kirkpatrick, District Judge, for the Eastern District of Pennsylvania, be, and they are hereby assigned to sit in above case in order to make a full court.

Goodrich, Circuit Judge.

Endorsements: Order Assigning Hon. Sam G. Bratton and Hon. Wm. H. Kirkpatrick for Argument. Received & Filed June 20, 1944. Wm. P. Rowland, Clerk.

[fol. 81] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8556

In the Matter of CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, President thereof, et al., Appellants

vs.

SHELTON PITNEY and WALTER P. GARDNER, Trustees of Debtor; et al.

And afterwards, to wit, the 20th day of June, 1944, come the parties aforesaid by their counsel aforesaid, and this

case being called for argument sur pleadings and briefs, before the Honorable Herbert F. Goodrich, and Honorable Sam G. Bratton, Circuit Judges, and Honorable Wm. H. Kirkpatrick, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 25th day of September, 1944, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 82] UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8556

In the Matter of CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, President thereof, et al., Appellants

v.

SHELTON PITNEY and WALTER P. GARDNER, Trustees of Debtor, Brotherhood of Railroad Trainmen, W. L. Reed, Vice President Thereof, et al., Appellees.

Appeal from the District Court of the United States for the District of New Jersey

Before Bratton* and Goodrich, *Circuit Judges*, and Kirkpatrick, *District Judge*

OPINION OF THE COURT—Filed September 25, 1944

By BRATTON, *Circuit Judge*.

Central Railroad Company of New Jersey is in process of reorganization under Section 77 of the Bankruptcy Act, as amended, 11 U. S. C. A. §205. The reorganization pro-[fol. 83] ceeding is pending in the United States Court for New Jersey. Order of Railway Conductors of America hereinafter called O. R. C., is the accredited representative under the Railway Labor Act, as amended, 45 U. S. C. A.

*By assignment.

§151, et seq., of road conductors in the service of the company. Brotherhood of Railroad Trainmen, hereinafter referred to as B. R. T., is the accredited representative of yard conductors in the service of the company in the New York Harbor Terminal Territory. The O. R. C. filed in the reorganization proceeding a petition seeking to restrain the trustees of the carrier from manning with yard conductors five daily freight trains or services commonly called the Bayway and Standard Oil drills. It was alleged in the petition that for some time past road conductors had manned the drills under the rules, rates of pay, and working conditions negotiated by and between O. R. C. and the carrier; that it was the intention of the carrier to displace road conductors on such drills with yard conductors; and that no notice of the intended change had been given as required by Section 6 of the Railway Labor Act. The trustees answered, and B. R. T. intervened. The matter was referred to a master. The master took testimony and submitted an intermediate report and a final report. The court entered an order determining that yard conductors were entitled to man the drills in question, and dismissing the petition. The appeal is from that order.

Taking up the question of jurisdiction of the court, subdivision (a) of Section 77, supra, 11 U. S. C. A. §205 (a), provides that if the petition for reorganization is approved the court "shall have and may exercise in addition to the powers conferred by this section all the powers * * * which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose." It is clear that if this provision stood alone, a court in which a proceeding for reorganization is pending would have jurisdiction to determine a controversy of this kind between two groups of conductors, and to direct the [fol. 84] trustees accordingly. But subsection (n) provides that in proceedings under the section, no judge or trustee acting under the Act shall change the wages or working conditions of railroad employees except in the manner prescribed in the Railway Labor Act, as amended, or as it may be amended. Section 2 of the Railway Labor Act, as amended, 45 U. S. C. A. §152, provides that a carrier shall not change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements, except in the manner prescribed in such agreements or in Section 6 of the Act. And Section 6, 45 U. S. C. A. § 156,

provides that carriers and representatives of employees shall give at least thirty days written notice of an intended change in agreements affecting rates of pay, rules, or working conditions; that the time and place for the beginning of conference between representatives of the parties in interest shall be agreed upon within ten days after receipt of the notice; that such time shall be within the thirty days provided in the notice; and that in every case where the notice has been given, or conferences are being held, or the services of the Mediation Board have been requested or the Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon by the Board, unless a period of ten days has elapsed after termination of the conferences without request for or proffer of the services of the Board. The Act contains many other provisions not necessary to outline in detail.

The history of the legislation in relation to the settlement of railway labor disputes, and the continued Congressional policy of encouraging the amicable adjustment of such disputes, manifested by the enactment of the Railway Labor Act, has been adequately reviewed and need not be repeated or recapitulated here. Texas & New Orleans Railroad Co. v. Brotherhood of Railway & Steamship Clerks, 281 U. S. 548; Virginia Railway Co. v. System [fol. 85] Federation Railway Employees, 300 U. S. 515; Moore v. Illinois Central Railroad Co., 312 U. S. 630; Switchmen's Union v. National Mediation Board, 320 U. S. 297; General Committee of Adjustment v. Missouri-Kansas-Texas Railroad Co., 320 U. S. 323; General Committee of Adjustment v. Southern Pacific Co., 320 U. S. 338; Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Railroad, 321 U. S. 50.

In this case, each Brotherhood has in force a basic agreement with the carrier relating to rates of pay, rules, and working conditions; and each craft of conductors involved in the controversy maintains its own seniority roster. The thirty-day notice required by Section 6 of the Railway Labor Act of an intended change in rates of pay, rules, or working conditions was not given, and no effort was made to proceed in the manner prescribed by the Act. If the conductors should be displaced on the five drills in question, in contravention of the basic agreement, the volume of work available for members of that craft would be cur-

tailed by that amount, and in the event of a sufficient diminution in business of the carrier those lowest on the roster would that much sooner be assigned to other runs, or be temporarily demoted to service as brakemen, or be without employment. And at the same time yard conductors would gain advantage in inverse order. Therefore the proposed displacement of road conductors with yard conductors did involve a change in working conditions, within the sweep of the Railway Labor Act. And the remedy prescribed by the Act was exclusive. Switchmen's Union v. National Mediation Board, supra; General Committee of Adjustment v. Missouri-Kansas-Texas Railroad Co., supra; General Committee of Adjustment v. Southern Pacific Co., supra.

Reliance is placed upon Section 24 (8) of the Judicial Code, 28 U. S. C. A. §41 (8) to sustain jurisdiction. The section vests in the district courts jurisdiction of all suits and proceedings arising under any law regulating com- [fol. 86] merce. That is a broad grant of general jurisdiction, and it does not have application in a case of this kind where Congress has made specific provision for the protection of the right which it created. Switchmen's Union v. National Mediation Board, supra. We think the petition failed to submit any right which was presently appropriate for protection or enforcement by judicial decree.

But if we should be mistaken in respect of the lack of jurisdiction, the yard conductors are not entitled to prevail on the merits. The right of a carrier to establish switching boundaries of yards is conceded. In 1929, the carrier fixed the switching boundaries of the Elizabethport yard, and both Brotherhoods expressed in writing their concurrence. Morse's Creek was designated as the southerly boundary of the switching limits, and these five drills are within the switching boundaries of the Elizabethport yard. The purpose of establishing the boundaries of the yard was to fix a line of demarcation between road service and yard service. It was to designate a line beyond which yard conductors should not go, and inside of which road conductors should not work, except in cases of emergency But despite the establishment of the yard limits, there was a certain amount of overlapping. Among other instances, road conductors manned the five drills in question, and yard conductors manned certain transfer runs which extended south of Morse's Creek and therefore outside of

the switching limits of the yard. The O. R. C. protested against yard conductors manning the transfer runs south of Morse's Creek, contending that the work belonged to road conductors. As the result, the carrier and O. R. C. entered into an agreement in 1940 which provided that after a certain date road conductors should perform all service south of Morse's Creek on the Perth Amboy Branch. The B. R. T. was not a party to that agreement. When yard conductors were displaced with road conductors on the transfer runs, B. R. T. urged that road conductors be taken off the Bayway and Standard Oil drills. In conse- [fol. 87] sequence, the carrier and B. R. T. entered into an agreement in 1943 which provided that effective on a certain date yard conductors should man the Bayway and Standard Oil drills. The O. R. C. was not a party to that agreement. Since the carrier and both Brotherhoods did not join in either of these two agreements, neither of them operated to take fro. the Brotherhood not a party to it and vest in the other any rights created by the basic collective bargaining agreements, or the rights arising out of the establishment of the limits of the Elizabethport yard. There is no basis for the contention that road conductors have the right to man these drills which lie within the switching limits of the yard.

The order appealed from is vacated, the proceeding is remanded for dismissal without prejudice to any action or proceeding not in conflict with the Railway Labor Act, as amended, and the costs are taxed against O. R. C.

A true Copy:

Teste:

——, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 88] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT; — TERM, 19—

No. 8556

In the Matter of CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, President thereof, et al., Appellants,

vs.

SHELTON PITNEY and WALTER P. GARDNER, Trustees of Debtor; Brotherhood of Railroad Trainmen, W. L. Reed, Vice President thereof, et al.

Present: Bratton and Goodrich, Circuit Judges, and Kirkpatrick, District Judge

Appeal from the District Court of the United States for the District of New Jersey

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the order of November 22, 1943 of the said District Court in this cause be, and the same is hereby vacated, and the proceeding is remanded to the said District Court for dismissal without prejudice to any action or proceeding not in conflict with the Railway Labor Act, as amended. Costs are taxed against Order of Railway Conductors of America.

By the Court, Goodrich, Circuit Judge

September 25, 1944.

Endorsements: Order Vacating District Court Order of November 22, 1943, etc. Received & Filed September 25, 1944. Wm. P. Rowland, Clerk.

[fol. 89] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8556

In the Matter of CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, President thereof, et al., Appellants,

vs.

SHELTON PITNEY and WALTER P. GARDNER, Trustees of Debtor; Brotherhood of Railroad Trainmen, W. L. Reed, Vice President Thereof, et al., Appellees

Order Extending Time for Filing Petition for Rehearing

Upon consideration of the application by counsel for Appellants,

It is ordered that time for filing a petition for rehearing in the above entitled cause be, and the same is, hereby extended to October 20, 1944.

October 6, 1944.

By the Court, Goodrich, Circuit Judge.

Received & Filed Oct. 6, 1944. Wm. P. Rowland, Clerk.

[fols. 88-90] [File endorsement omitted]

[fol. 91] IN UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

[Title omitted]

APPELLANTS' PETITION AND BRIEF FOR REHEARING—Filed October 19, 1944

To the Honorable the United States Circuit Court of Appeals for the Third Circuit:

1. Your petitioners, the appellants, feeling themselves aggrieved by the decision of this Honorable Court, respectfully ask a rehearing of the appeal herein and that, on such rehearing, the judgment appealed from be reversed.

[fol. 92] 2. Your petitioners pray that in the meanwhile the issuance of the mandate by your court be stayed.

3. The appellants herein filed a petition in the reorganization proceedings of the Central Railroad of New Jersey in the United States District Court for the District of New Jersey to enforce (a) a written agreement entered into between the defendant and the plaintiff dated March 7, 1940; (b) to enforce seniority rights which plaintiff had acquired by custom and practice over a period of thirty-five or forty years and (c) its contract or schedule with respect to the right of road conductors to man five specific road drill jobs and to prohibit the defendant from summarily removing road conductors therefrom.

4. The defendant appeared on the return of an order to show cause. Brotherhood of Railroad Trainmen, et als. petitioned to intervene. The petition was granted and the issues referred to a Standing Master who concluded that the plaintiff's petition should be dismissed.

5. The appeal herein is from a decree of the United States District Court for the District of New Jersey affirming the Master's report and dismissing the petition.

6. Petitioners ask for a rehearing on the grounds that this Honorable Court has

(a) overlooked important facts in the appellants' case which, when applied to the decisions cited, bring

the appellants' cause of action within the jurisdiction of the Federal Court,

(b) rendered dictum on the facts involved in the case, when this Honorable Court has at the same time decided that it was without jurisdiction to pass upon the case, and

(c) overlooked important facts which were established by the evidence and which if considered would have an important bearing on the determination of the merits of the appellants' case.

[fol. 93] Argument

I

The United States District Court had jurisdiction of this proceeding.

The question of jurisdiction was not directly at issue in this appeal. The Master and the court below decided that the court had jurisdiction. We did recognize that, as the case was unusual, something should be said in our brief on this point but as the question of jurisdiction had never seriously been contested by the appellees, we did not indulge in a prolonged argument thereon.

As stated in the opinion of this court,

"Section 6, 45 U. S. C. A. 156, provides that carriers and representatives of employees shall give at least thirty days written notice of an intended change in agreements affecting rates of pay, rules, or working conditions; that the time and place for the beginning of conference between representatives of the parties in interest shall be agreed upon within ten days after receipt of the notice; that such time shall be within the thirty days provided in the notice; and that in every case where the notice has been given, or conferences are being held, or the services of the Mediation Board have been requested, or the Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon by the Board, unless a period of ten days has elapsed after termination of the conferences without request for or proffer of the services of the Board" (Opinion, p. 3).

This section provides both a procedure for the carrier or representatives of employees desiring to change rates of pay, rules or working conditions and also provided a restraint on the change of rates of pay, rules or working conditions pending a determination of the Board.

[fol. 94] Your Honorable Judges held that the thirty day notice of an intended change in rates of pay, rules or working conditions as required by the above provision of the Railway Labor Act was not given (Opinion, p. 4). This was the undisputed evidence in the case. There had been some discussion concerning the Bayway and Standard Oil drills as a result of which Order of Railway Conductors, the appellants herein, asked the Mediation Board to take jurisdiction. The carrier advised the Mediation Board by letter on January 2, 1943,

> "It is the position of the carrier that it has filed no notice of a desire to change existing agreements, nor does it propose to do so,——"

The following March 6th, or about two months later, it advertised for yard conductors to replace the road conductors on the drills in question.

It is of extreme importance at this point to bear in mind that the action of the carrier was the *action of the trustees* of the debtor corporation, officials of the Federal Court. The trustees through their employee advised the Mediation Board that they did not intend to make any change in rates of pay, rules, etc. The trustees then, irrespective of this advice to the Mediation Board which impelled that board to refuse jurisdiction (Ex. P-12), proceeded to displace the members of the Order of Railway Conductors by members of the Brotherhood of Railroad Trainmen.

We call the court's particular attention to the wording of 11 U. S. C. A. 205 N, which states, in part,

> "That in proceedings under the section, no judge or trustee acting under the Act shall change the wages or working conditions of railroad employees, except in the manner prescribed in the Railway Labor Act, as amended, or as it may be amended."

The limitation is not only on a judge. *It is also on the trustees.*

At page 4 of its opinion this honorable court correctly concluded that,

> [fol. 95] "* * * the proposed displacement of road conductors with yard conductors did involve a change in working conditions, within the sweep of the Railway Labor Act."

This honorable court's opinion had theretofore referred to the provisions of the Railway Labor Act and 11 U. S. C. A. 205(n), both of which *expressly prohibited* the doing of the very thing which this court stated "* * * did involve a change in working conditions, within the sweep of the Railway Labor Act."

As stated by Mr. Justice Rutledge in *Brotherhood of Railway Trainmen* v. *Toledo, Peoria and Western Railroad*, 88 Law Edition, 331,

> "Under the Statute, no change in rates of pay, rules, working conditions or established practices can be made for 30 days, unless in that time the parties agree to arbitration or an emergency board is created under paragraph 10."

From the conclusions of this honorable court, that the act of the carrier in displacing the road conductors constituted a change in "working conditions" and that no notice of such intended change was given as required by the Railway Labor Act, it is clear that *unless an exclusive remedy is provided by that Act*, appellants are entitled to the relief prayed for and the trustees of the debtor should be restrained from changing "working conditions" in violation of the Act.

But this court after thus holding that the act of the debtor by its trustees was in violation of the Railway Labor Act stated,

> "And the remedy prescribed by the act was exclusive" (p. 3).

In this conclusion, we submit the court is in error.

It is axiomatic that where there is a wrong, there must be a remedy. This court fails to point out any section of the Railway Labor Act which prescribes any remedy for such a violation. We submit there is no remedy prescribed [fol. 96] by the act either exclusive or optional. The situ-

ation is not comparable to that found in *Switchmen's Union v. National Mediation Board*, 320 U. S. 297, which involved a dispute as to who was or was not the representative of a class of employees for the purpose of collective bargaining under the act. It was there merely held that the express provisions of Section 2, Ninth, of the Railway Labor Act directed the Mediation Board

> "to investigate such disputes and to certify to both parties, in writing, within thirty days after the rece-pt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act."

In *Stark* v. *Wickard*, 321 U. S. 288, 306-307, it was stated,

> "* * * Under the unusual circumstances of the historical development of the Railway Labor Act, this court has recently held that an administrative agency's determination of a controversy between unions of employees as to which is the proper bargaining representative of certain employees is not justiciable in federal courts. *General Committee* v. *M. K. T. R. Co.*, 320 U. S. 323. Under the same Act it was held on the same date that the determination by the National Mediation Board of the participants in an election for representatives for collective bargaining likewise was not subject to judicial review. *Switchmen's Union* v. *Mediation Board*, 320 U. S. 297. *This result was reached because of this court's view that jurisdictional disputes between unions were left by Congress to mediation rather than adjudication.* 320 U. S. 302 and 337. That is to say, no personal right of employees, enforcible in the courts, was created in the particular instances under consideration. 320 U. S. 337, 64 S. Ct. 152. *But where rights of collective bargaining, created by the same Railway Labor Act, contained definite prohibitions of conduct or were mandatory in* [fol. 97] *form, this court enforced the rights judicially.* 320 U. S. 330, 331. Cf. *Texas & N. O. R. Co.* v. *Brother-*

hood of Clerks, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515. (Italics ours.)

Mr. Justice Douglas, in his opinion in the *Switchmen's* case, *supra*, in referring to *Texas & N. O. R. Co.* v. *Railway Clerks*, 281 U. S. 548, and *Virginian Ry. Co.* v. *System Federation 40*, 300 U. S. 515, stated,

> "In those cases it was apparent that but for the general jurisdiction of the federal courts there would be no remedy to enforce the statutory commands which Congress had written into the Railway Labor Act. The result would have been that the 'right' of collective bargaining was unsupported by any legal sanction. That would have robbed the Act of its vitality and thwarted its purpose. Such considerations are not applicable here. The Act in Art. 2, Fourth writes into law the 'right' of the 'majority of any craft or class of employees' to 'determine who shall be the representative of the craft or class for the purposes of this Act.' That 'right' is protected by art. 2, Ninth which gives the Mediation Board the power to resolve controversies concerning it and as an incident thereto to determine what is the appropriate craft or class in which the election should be held. See *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 88 F. 2d 757; *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 135 F. 2d 780. A review by the federal district courts of the Board's determination is not necessary to preserve or protect that 'right'. Congress for reasons of its own decided upon the method for the protection of the 'right' which it created. *It selected the precise machinery and fashioned the tool which it deemed suited to that end.*" (Italics ours.)

By what provision of the Railway Labor Act did Congress select the precise machinery and fashion the tool for the Mediation Board to assume jurisdiction in a case such as this where the trustees of the Carrier contrary to the express provision of the Act and without giving the thirty days' notice required thereby, arbitrarily and summarily [fol. 98] proceeded to change working conditions affecting the class and craft of road conductors? We submit that the Railway Labor Act contains no provision giving the

Mediation Board jurisdiction under the above stated facts. The Mediation Board ruled that it had no jurisdiction (Ex. P-12). Under the doctrine of the *Switchmen's* case, *supra*, the Board's interpretation of its duties and powers is a finality not subject to judicial review.

The National Mediation Board did state in its refusal to accept jurisdiction (Ex. P-12),

> "From the above it does not appear that the carrier has yet proceeded to carry out its intention and that when it does, your remedy is to make claim under your existing agreement."

If, therefore, this court restores the O. R. C. to its original position and compels the trustees of the Carrier to give notice of their intention to change the existing agreement, it is quite apparent that the National Mediation Board would accept jurisdiction of the case.

This case falls squarely within the language of Mr. Justice Douglas in the *Switchmen's* case, *supra*, whereby he states the exception to the general rule as follows:

> "If the absence of jurisdiction of the federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control. That was the purport of the decisions of this court in *Texas & N. O. R. Co.* vs. *Brotherhood of Ry. and S. S. Clerks*, 281 U. S. 548 and *Virginian Ry. Co.* vs. *System Federation No. 40*, 300 U. S. 515.

and the language found in *Stark* v. *Wickard*, *supra*, which followed the *Switchmen's* case, where the court said,

> "But where rights of collective bargaining, created by the same Railway Labor Act, contained definite prohibitions of conduct or were mandatory in form, this court enforced the rights judicially."

[fol. 99] Attention is further directed to the case of *Order of Railway Conductors of America, et al.* vs. *The Pennsylvania Railroad, et al.*, decided following the original submission of this cause, by the Court of Appeals for the District of Columbia, and reported in 141 Fed. 2d 366. The Pennsylvania Railroad, Brotherhood of Railroad Train-

men, and the National Mediation Board were parties defendants in that case. A petition for a writ of certiorari was filed by the Order of Railway Conductors in the Supreme Court of the United States *only* as against the Pennsylvania Railroad and Brotherhood of Railroad Trainmen. Certiorari was granted October 9, 1944.

If this honorable court is correct in its conclusion that it does not have jurisdiction, the inescapable conclusion is that the Federal Court does not have control over the acts of its own trustees, nor the power to restrain such trustees from violating the definite prohibitions of conduct prescribed by the Railway Labor Act and 11 U. S. C. A. 205(n).

Irrespective of the aforesaid citations, this court has control over the acts of its trustees by reason of its general equity power. U. S. C. A. Title 11, paragraph 205 (a) provides that in reorganizations when the petition is approved by the court, the court shall have power and jurisdiction over the debtor and its property.

> "and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal Court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose."

As to specific authority of the court over receivers, manufacturers and trustees, see U. S. C. A. Title 28, paragraphs 124 and 125.

The relief sought by appellant, O. R. C., is to restrain the trustees of the debtor, its officials and employees, from violating the agreement of March 7, 1940 and for such other relief as the court should grant (Petition App. Pl). Such other relief includes the violation of the established custom [fol. 100] of the class and craft of road conductors to man the five drills in question over a period of 35 and 40 years and the violation of the collective bargaining agreement (Ex. T-1).

We will assume, as indicated in the opinion of this court, that the agreement of March 7, 1940 (Ex. T-2) in which the trustees of the debtor agreed with appellants that it would make no changes in the working conditions of the class and craft of road conductors with reference to the 5 road drills in question, could not operate to take away any rights which the B of R. T. may have had as it was not a party thereto. We will likewise assume that the agree-

ment of March 16, 1943 (Ex. T-10) between the trustee of the debtor and B. of R. T. in which the trustee of the debtor agreed to remove the road conductors from the 5 road drills in question and replace them with yard conductors could not operate to take away any right of O. R. C. because it was not a party thereto. Notwithstanding such an assumption, the fact remains that the trustees of the debtor did, either by their agreement with B. of R. T. dated March 16, 1943, of which O. R. C. was not a party, or by their own acts or a combination of both, take from the class and craft of road conductors the 5 road drill jobs in question. Therefore, irrespective of the court's conclusion as to the effect of these two bi-party agreements, O. R. C. has been deprived of its rights by an agreement to which it was not a party. The trustees of the debtor have made a change which "did involve a change in working conditions within the sweep of the Railway Labor Act".

Such act was in direct violation of the definite prohibitions of Section 2, Seventh, and Section 6 of the Railway Labor Act and Title 11 U. S. C. A. 205 (n).

These petitioners are without remedy unless your honorable court restrains the trustees of the debtor from violating the clear and unequivocal provisions of the Federal statutes applicable and restores the road conductors to the 5 road drill jobs in question until the trustees proceed in accordance with the Federal statutes and notice is given of an intended change of working conditions in the manner prescribed thereby. If the trustees of the debtor are re-[fol. 101] strained and ordered to restore the road conductors to their jobs and the debtor corporation still desires to bring about a change of working conditions, it may give the thirty day notice required by the act, in which event the appellants have the following procedure available to them:

(1) Time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, (Section 6);

(2) Appellant, under Section 5 of the Act, may invoke the services of the Mediation Board with reference to the dispute;

(3) If neither appellant nor the carrier requests the services of the Mediation Board the Mediation Board may proffer its services;

(4) The working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board (Section 6);

(5) The interested parties *may*, under provisions of Section 7, agree to submit the matter to arbitration; and

(6) Lastly, an Emergency Board under Section 10 of the Act may be created by the President to consider the dispute.

If the trustees of the debtor *had complied with the Railway Labor Act*, the machinery for the settlement of such disputes would have come into play. Conferences would have been held by the interested parties and the Carrier and the services of the Mediation Board could have been invoked by either party or the services of the board proffered. Section 6 of the Act would have prevented any change in working conditions pending the operation of the act. In addition, arbitration might have been agreed upon as provided by Section 7. Had the disagreement not been [fol. 102] settled by the services of the Mediation Board or by arbitration, the provision of Section 10 for the appointment of an emergency board would have become applicable.

It is only because the trustees of the debtor changed working conditions without giving the required thirty days' notice that the procedure set up by the Railway Labor Act could not be brought into operation.

This honorable court should require the trustees to comply with the provisions of said act.

II

If this honorable court still feels that the United States District Court does not have jurisdiction of the petition and proceedings in this cause, we question whether the court should have expressed an opinion on the facts even if that opinion is merely *dictum*. If the court was without jurisdiction, its sole interest in the facts was to consider them sufficiently to determine the question of jurisdiction. We question whether the appellants' right to a further proceeding in the Supreme Court of the United States or

before any tribunal, agency or board created under the Railway Labor Act, should be prejudiced by any findings of fact or conclusions of law on the merits, if the court still concludes that it has no jurisdiction.

III

Petitioners Should Prevail on the Merits

If upon reconsideration this Honorable Court determines that it has jurisdiction for the reasons set forth in Paragraph I of this Argument, we further contend that the facts do warrant the issuance of a restraint against the trustee from violating the contract dated March 7, 1940, the collective bargaining agreement of August 1st, 1927 (Ex. T-1), the custom and usage which had been established over a [fol. 103] period of thirty-five or forty years, and the Railway Labor Act.

As this court concluded that the action of the trustees of the debtor corporation changed the rates of pay, rules and working conditions of the members of O. R. C. employed on the five road drills in question, it is a grave question whether that in itself is not a sufficient basis for the relief asked. Under no circumstances should the trustees of the debtor corporation be permitted to violate the provision of the Railway Labor Act. Certainly not with the approval of the Federal Court.

This Honorable Court held that neither the agreement between the trustees of the debtor corporation and the O. R. C. dated March 7, 1940, or the agreement between the trustees of the debtor corporation and B. of R. T. dated March 16, 1943,

> "operated to take from the Brotherhood not a party to it and vest in the other any rights created by the basic collective bargaining agreements or the rights arising out of the establishment of the switching limits of the Elizabethport Yard" (Opinion, p. 6).

O. R. C. argued in its main brief that its agreement of March 7, 1940, with the trustees of the debtor corporation did not take anything from B. of R. T. or give anything new to O. R. C. but merely reaffirmed its rights. Even if it can be said that a change was made at that time in the manning of the transfer crews which never should have been manned by yard men and which was work that always belonged to road conductors, the fact remains that the wording of the

agreement itself clearly shows that insofar as the five road drills in question were concerned, no change was made by that agreement. The agreement provided (Appendix, p. 8):

> "No other change from the present method of assigning conductors to service operated in the territory described in the preamble hereof shall be made except by agreement between the parties hereto."

[fol. 104] As the agreement made no change insofar as the five road drills in question were concerned, it does not operate against the B. of R. T. in that respect.

That agreement could be disassociated from the case because it was merely a reaffirmance of the preexisting rights of the O. R. C. as far as these five road drills were concerned.

Eliminating that agreement you still have the fact that by custom and usage the five drills in question had been manned by road men continually from the time of their inception to the time the basic bargaining agreement between the carrier and the O. R. C. was entered into on August 1, 1927 (Ex. T-1). The drills continued to be operated by road conductors until the entry of the decree in the District Court below in November, 1943. That continuance was without protest by B. of R. T. until some time in 1946 shortly before the agreement of March 7, 1940, notwithstanding the collective bargaining agreement (T-1) effective August 1, 1927, and the establishment of the switching limits in 1929.

These petitioners urged under Point I of their brief and repeat the argument set forth therein that the establishment of the switching limits, together with Rule 34 of the O. R. C. schedule and Rule 28 of the B. of R. T. schedule did not exclude the road conductors or members of O. R. C. from manning the five drills in question and respectfully urge that this honorable court reconsider that argument in the petitioners' brief.

Irrespective then of any contract rights, the O. R. C. had acquired by custom and usage the right to man those drills. In a much similar case decided by the First Division of the National Railroad Adjustment Board on *June 12, 1944, Switchmen's Union of North America,—The Denver and Rio Grande Western Railroad Company*, Award No. 9526, Docket No. 16482, the Board held:

"The facts and circumstances giving rise to the protest made subject of dispute in this docket are found to have been established over a long period of [fol. 105] years under the terms of agreements governing wages and working conditions of employees concerned, executed jointly by respondent carrier and accredited representatives of the Order of Railway Conductors and the Brotherhood of Railroad Trainmen.

"The 'protest' made subject to dispute herein seeks to change the commonly understood and agreed to application of the said agreement by parties signatory thereto. This the division holds may only be accomplished by further negotiation and agreement by and between representatives of all employees to be affected by such change, and the case will be remanded for such purpose."

The dispute in the aforesaid case concerned the right of a road crew to perform services within the switching limits.

Wherefore, your petitioners respectfully pray for a rehearing of the appeal herein and that on such rehearing the judgment below should be reversed and the prayer of the petition granted in that the trustees of the debtor corporation be required to replace the employees of O. R. C. on the five road drills in question until such time as they have complied with the provisions of the Railway Labor Act.

Order of Railway Conductors of America, H. W. Fraser, President and Grover C. Apgar, Chairman of the General Committee of Adjustment on the Central Railroad of New Jersey, etc., Petitioners, by Carl S. Kuebler, Attorney; with V. C. Shuttleworth, of the Iowa Bar.

[fol. 106] STATE OF NEW JERSEY,
County of Hudson, ss:

I, Carl S. Kuebler, one of the petitioners-appellants' attorneys, do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay.

Carl S. Kuebler.

Subscribed and sworn to before me this 16th day of October, 1944. Alice M. Boyle, Notary Public of New Jersey. (Seal.)

7—37

[fol. 91] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8556

In the Matter of CENTRAL RAILROAD COMPANY OF NEW JERSEY; Debtor

ORDER OF RAILWAY CONDUCTORS OF AMERICA; H. W. FRASER, President thereof, et al., Appellants,

vs.

SHELTON PITNEY and WALTER P. GARDNER, Trustees of Debtor; Brotherhood of Railroad Trainmen, W. L. Reed, Vice President Thereof, et al., Appellees

Order Amending Opinion

Present: Brattoir and Goodrich, Circuit Judges and Kirkpatrick, District Judge

And Now, to wit: This 6th day of October 1944,

It is ordered that the opinion of this Court filed on September 25, 1944 in the above entitled cause be and the same is hereby amended by inserting the word "road" for the word "yard" appearing in the ninth line from the top of page five of the printed opinion, so that the first sentence of the paragraph commencing on that page shall read as follows:

> "But if we should be mistaken in respect of the lack of jurisdiction, the road conductors are not entitled to prevail on the merits."

By the Court, Goodrich, Circuit Judge.

Received & Filed Oct. 6, 1944. Wm. P. Rowland, Clerk.

[fol. 92] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8556

In the Matter of CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor

Appeal of Order of Railway Conductors of America, H. W. Fraser, President thereof, et al.

Sur Petition for Rehearing

And now, to wit, November 16, 1944, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia,

John Biggs, Jr., Circuit Judge.

Endorsements: Order Denying Petition for Rehearing. Received & Filed Nov. 16, 1944. Wm. P. Rowland, Clerk.

[fol. 93] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Set:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendix to Brief for Appellant, as constituting the portions of the record before this court at argument; and proceedings in this court in the Matter of Central Railroad Co. of New Jersey, Debtor, Appeal of Order of Railway Conductors of America, et al., No. 8556, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 21st day of November in the year of our Lord one thousand nine hundred and forty-four and of the Independence of the United States the one hundred and sixty-ninth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 109] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 18, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9778)